Judge Smith: You may.

Mr. Wade: Thank you, your Honor.

(Pause)

Mr. Satter: Your Honor, may I apologize. I'm sorry.

[5] **Leo Parskey,**

called as a witness, being first duly sworn, was examined, and testified as follows:

The Clerk: Will you state your name, please.

The Witness: Leo Parskey.

The Clerk: And where are you from?

The Witness: Bloomfield, Connecticut.

Direct Examination

By Mr. Satter:

Q. Mr. Parskey, were you a member of the Board, the Reapportionment Board which created the so-called Board Plan? A. Yes.

Mr. Satter: Your Honor, may I submit that as an exhibit now. I don't think the Board Plan has been submitted as an exhibit. I think maybe we ought to put it in as an exhibit; Plaintiffs' Exhibit 1.

Judge Blumenfeld: You mean this?

Mr. Satter: Yes. I think it should be identified in the description of the Plan, itself.

Judge Blumenfeld: I'm willing to sacrifice mine for the purpose of an exhibit.

Mr. Satter: May I just look at it for a minute.

By Mr. Satter:

Q. Mr. Parskey, is this the Board Plan as adopted? A. Yes.

Mr. Satter: May we have the Board Plan, itself, [6] and the maps, which is part of it, marked Plaintiffs' Exhibit 1?

Judge Smith: Mark it Plaintiffs' Exhibit 1.

Mr. Satter: There's no objection, I take it.

(Plaintiff's Exhibit 1: Board Plan and maps, marked full exhibit.)

By Mr. Satter:

Q. Mr. Parskey, were you chosen as a member of this Reapportionment Board by the Speaker of the House of Representatives? A. Yes.

Q. And are you presently a Judge of the Superior Court? A. Yes.

Judge Smith: Isn't this all in the stipulation, or is it?

Mr. Satter: I'm not too sure.

Mr. Wade: No.

Mr. Satter: I'm not sure that it is.

Mr. McCarthy: I believe it is.

Mr. Satter: I'll try to keep it down.

By Mr. Satter:

Q. Now, in the first meetings among the members of the Board, were the general principles and the basis of which you were to reapportion the House and the Senate discussed? A. There were some discussions, yes.

[7] Q. And was there a discussion as to the United States constitutional requirements? A. Yes.

Q. Was there discussion as to what the Board would adopt as the maximum percentage deviation as to both the Senate and the House? A. We had no such discussion as a Board.

Q. Well, did you have a general operating principle that was to be adopted with respect to the deviation principle, the per cent deviation to be used for Senate and House? A. Well, that's a pretty hard question to answer, if you're asking me whether or not the Board came to any conclusions about that in the initial stages.

My impression was that Judge Saden had an operating principle, in both the Senate and the House, as far as deviation was concerned, yes, and stated it.

Q. And what was it? A. In the Senate, 1 per cent; and in the House 4 per cent.

Q. Was there a recognition by the oBard that— withdraw that.

Did the Board recognize that the constitutional requirements, federal constitutional requirements of the Equal Protection Clause required that there be a very low percentage?

Mr. McCarthy: Objection, your Honor. Conclusory.

[8] Judge Smith: It appears to be immaterial.

The objection is sustained.

By Mr. Satter:

Q. Was there an awareness by the Board as to a fundamental conflict between the federal constitutional requirements and the state constitutional provision prohibiting the dividing of town lines? A. Yes.

Mr. McCarthy: If your Honors please, let me state at this juncture a fundamental objection to the consideration here of the state constitutional requirement of town integrity in the formation of house districts.

Consistent with our first defense of abstention, or at least continuance pending state court proceedings on primarily the state court point under Scott vs. Germano, I think this subject matter is, if not irrelevant, at least immaterial here.

I think the issue before this Court is the mathematics of Reynolds vs. Sims and its successive federal equal population per electoral district cases.

Judge Smith: The objection is overruled.

Mr. Satter: Would you repeat the last question, please?

[9] By Mr. Satter:

(Question and answer read back.)

Q. Did the Board, in these early discussions, arrive at an operating principle as to how it would deal with that conflict? A. Well, the only discussion as a Board indicated that it was our feeling at the beginning that town lines would have to be cut in order to comply with the require-

ments of the federal constitution. Beyond that, I don't recall any discussion by the Board of an operating principle. However, I have impressions as to what the operating principles were.

Q. And what were they? A. That once the town lines were cut at all, that from then on they could be cut without an examination of the Connecticut Constitution.

You see, you asked me a question about what the Board did and what happened. Actually, at the early stages we didn't examine these propositions one by one and make a decision as a Board. After some early discussions what happened was that Judge Saden worked by himself and I worked by myself, and the only impressions I can give you is my impressions as to what I felt Judge Saden's view was on this.

Now, in the course of time the three of us did get together on occasion and had further discussions. But when you speak of it as a Board, it's hard to answer that question [10] in precisely that fashion.

Q. Was there a fundamental operating working principle, even if it hadn't been discussed, on the basis of how you dealt with the cutting of town lines in order to comply with the federal constitutional requirements? A. Well, yes. The impression that I had was that the operating principle was that once the town lines were cut, that from then on it didn't make any difference.

Q. It didn't make any difference how many times they were cut? A. That's right.

Mr. Satter. No further questions.

Mr. Beizer: As intervening plaintiffs, might I ask one or two questions of Mr. Parskey?

Judge Smith: You may.

Cross-Examination

By Mr. Beizer:

Q. Just two questions, Mr. Parskey. First, prior to ascending to the Bench in the Superior Court for the State

of Connecticut, were you counsel to the Democratic Party in the State of Connecticut?

Mr. McCarthy: Objection, your Honor.

If I may, it is once again a fundamental principle, of course, of this hearing that elements of political involvement are not justiciable under [11] the cases cited in my brief.

That apart from elements of racial consideration from Colegrove vs. Green to Whitcomb vs. Chavis, most recently, our Supreme Court forebears the entertainment of political elements in any reapportionment plan, recognizing that the same is inherently political of necessity.

Mr. Cannon: May it please the Court, I would join in the objection as immaterial and irrelevant to the issues in the case, prior to being appointed to the Board, as not relevant to the issue.

Judge Smith: The objection is overruled.

A. What is the question, whether I was counsel to the Democratic Party before I was appointed to the bench?

Q. Yes. A. The answer is yes.

Q. And also for some years prior to ascending to the bench were you identified with and did you work with the Democratic Party? A. Yes.

Mr. Beizer: No further questions.

Mr. Cannon: No questions.

Cross-Examination

By Mr. McCarthy:

Q. Judge Parskey, in your consideration of elements of [12] reapportionment planning as a member of the Board, did you bring to your deliberations any statistical background? A. You mean what-

Q. Perhaps it may be helpful if I amplify the question.

Did you present to the other members of the Board any statistics with respect to plans of reapportionment? A. Oh, yes, we discussed that.

Q. Did you have any exhibits, statistical analysis, with respect to population, town lines, deviations from arbitrarily assumed perfection in the division of population into electoral districts? A. We had an array of statistics that were presented and I had statistics as Judge Saden had, yes.

Q. Do you recall the source of your statistics, Judge Parskey? A. Well, we had, I suppose it was, a combination of things; we had the statistics on population, we had statistics on election returns, we had general experience.

Q. More specifically, Judge, from whom, by name, if you recall, did you obtain such statistics? A. Well, I had my own and I did have two people working with me as part of the staff; Mr. Tom Vocelli and Miss Karen Weiss.

Q. Do you have any of your source data readily at hand, Judge? [13] A. No, I didn't bring anything here.

Q. Could it be made available at need? A. Yes, whatever I have. I think I have some of that at home. Surely.

Q. I would appreciate it if you could make it available for our review. A. Certainly.

Mr. Cannon: Well, may I address the Court?

I would object to the statistics that they worked with as the final Plan that's before the Court and whether or not that is constitutional as it now stands.

Judge Smith: They haven't been offered. He has been asked if he could make them available.

Mr. Cannon: I realize that, your Honor.

Judge Smith: If he wishes to introduce them, that would be another question.

But as far as the question goes, we will allow it up to this point.

By Mr. McCarthy:

Q. Did you or your associates, Mr. Vocelli or Mrs. Weiss, develop alternative plans for the Senate? A. Yes.

Q. Do you have those plans at hand, Judge? A. I'm not quite sure. I would have to check back.

[14] Q. I would appreciate it if you could do so. A. Yes. Because it seems to me, as I recall it, there was one plan that I thought was left with Judge Thim. Now, whether or not there were any copies of those and whether I have any of those copies or whether those copies are with Mr. Vocelli or Miss Weiss, I'm not sure.

Judge Blumenfeld: Isn't this all a matter for pre-trial discovery rather than court inquiry, Mr. McCarthy? Can't we get on with the case here?

By Mr. McCarthy:

Q. May I inquire, then, whether you have any such plans with respect to the House, Judge Parskey? A. Yes. There was a plan—it was a very general plan. There wasn't a detailed plan. It was a plan that was given to Judge Saden that was in block areas, without a breakdown. Other than that, I didn't have any.

Q. Do you recall the deviations of those plans? A. Specifically, no, I don't. The impression is, it seems to me that the House plan, there was one that was within five per cent. I thought there was another within four per cent.

Q. In your discussion of basic principles in the composition of a plan of reapportionment with the other members of the Board, do you recall discussions of maintenance of contiguity or assignment of population? [15] A. I don't understand the question.

Q. In your basic consideration of guiding principles which would fashion your development of plans, you have spoken with respect to town lines. I'm curious whether you also considered the input of elements of maintenance of contiguity in the formation of House districts? And if I may double the question, assignment of population to each and every district? A. Well, the only discussion I recall in connection with that is in the discussion of the Plan that was ultimately adopted by the majority.

I know that I raised very serious objections to the manner in which the various towns were cut. They were cut in all sorts of different ways. And that was raised.

I raised similar objections to certain cuts that were made in the Senate plan.

Q. What was the basis of your objections, Judge? A. Well, there didn't seem to me to be any particular need for promiscuous cutting. It made no sense, from a population point of view, to have these cuts made. So that if the only criterion was to keep within the 1 per cent or the 4 per cent, it wasn't necessary to do that for the purposes of these cuts.

Q. Do you recall those population percentage figures of which you have spoken, 1 per cent for the Senate and 4 [16] per cent for the House, as specific desiderata; or to put the question conversely, was it possibly the understanding of the Board to reduce these deviations as much as possible? A. As I recall, the Board never acted on that as a proposition. We never sat down and said that we shall keep within 1 per cent or we shall keep within 4 per cent. The figures that I gave you were figures that were selected by Judge Saden.

Q. Was it your basic and guiding intent, Judge Parskey, in the composition of electoral districts for both Senate and House to use all the population in the state? A. Well—

Q. Or put it another way, put it conversely; you didn't intend to leave out any of the total state population, did you? A. Oh, no.

Mr. McCarthy: No further questions. Thank you.

Judge Blumenfeld: Are you through with this witness?

Mr. McCarthy: I am, your Honor. Thank you.

Judge Blumenfeld: May I ask him a question before he leaves.

Judge, who decided that there should be 151 Representatives? Whose decision was that?

The Witness: I would say that was a Board de- [17] cision.

Judge Blumenfeld: The Board decided that.

The Witness: I think that what brought it about was that the Commission that was—there's a three step process under the state constitution. The Legislature is first, then the Commission and then the Board. And the final Commission plan, which we had and which we examined, was for 151 members in the House. And we accepted that.

Judge Blumenfeld: So it originated there, so far as you know?

The Witness: Yes.

Judge Smith: That was a plan not adopted by the Commission in such form that it could become final, but was it the plan of the majority of the Commission?

The Witness: It was listed as a final draft. I don't believe that it had actually been approved, as such, by the requisite vote. But it was listed and marked as a final draft. We had it before us.

Judge Blumenfeld: Then so far as you know the first authoritative determination was that made by the Board?

The Witness: Yes.

Judge Blumenfeld: There was no discussion at [18] all about that. You just accepted that?

The Witness: Yes.

Judge Smith: Mr. Satter?

Mr. Satter: That's all. Thank you, Judge.

Mr. McCarthy: May I add one further question, your Honor?

Judge Smith: You may.

Mr. McCarthy: Thank you, your Honor.

By Mr. McCarthy:

Q. With respect to the issue of cutting town lines, I show you an exhibit for identification captioned "Final Commission Draft" and ask you if you recognize it? A. Well, I don't recognize in this form. I have no reason to

say that this isn't what we had. But what we actually had was a very, very large map that was so designated. And unless I had that before me and could compare that with this, you know, just on a quick glance I really can't say.

I can see similarities in some areas to what I know was there. And this could very well be a copy of the Final Commission Draft of the Senate. But if you ask me is this the Final Commission Draft, it was not in a form of this. It wasn't even in this size. So this isn't the Xerox copy of the actual document. The actual document was much larger.

Mr. McCarthy: Thank you.

I will ask to have it marked for identification [19] if your Honors please.

Judge Smith: Defendants' A for Identification.

Mr. Satter: No objection.

(Defendants' Exhibit A for Identification: Final Commission Draft.)

By Mr. McCarthy:

Q. Leaving this with you as an exhibit simply for identification and not for evidence, Judge Parskey, may I ask you whether as the Plan is depicted before you with respect to the composition of Senate districts, whether you recognize that it cuts town lines? A. Yes. Incidentally, there's nothing in the Connecticut Constitution about cutting town lines as far as senatorial districts were concerned. And there was no question but what this Plan cuts town lines.

Judge Blumenfeld: You are talking about something not in evidence.

Do counsel for the plaintiffs agree that this is a copy of the Commission's plan?

Mr. Satter: I can't either agree or disagree. I have no way of knowing.

Mr. McCarthy: That's all. Thank you, your Honor.

Judge Blumenfeld: You are excused.

(Witness excused.)

[20] **Leo Donohue,**

called as a witness, being first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Leo Donohue, Avon.

Direct Examination

By Mr. Satter:

Q. Mr. Donohue, what is your present position in state government? A. State Auditor of Public Accounts.

Q. And what other positions have you held in the government of the State of Connecticut? A. I have been Commissioner of Finance and Control, Deputy Commissioner of Finance and civil servant in several departments, including the Budget Division of the Department of Finance.

Q. And are you familiar with the financial relationships between the State of Connecticut and the various towns throughout the state? A. Yes.

Q. And are you aware that—withdraw the question.

Do towns in the State of Connecticut perform certain state functions as agents of the state? A. Well, yes. I'm not an attorney, but there is a court case that has determined that local Boards of Education are agents of the state.

But in addition to that, there are provisions in the [21] statutes under which state agencies may contract with municipalities so that municipalities may perform services for the state.

Q. And what kinds of functions, for example, either on a contractual basis, do towns perform for the state? A. Well, one that readily comes to mind is the maintenance of a road. For the convenience of the municipality and the state the state can contract with the municipality to maintain a certain area of state road that it might be inconvenient for the state to maintain.

Q. Are there any other functions, such as the administration of Welfare, et cetera? A. Yes. The Town of

Greenwich, I think, is the only town in the state, the only one I can think of at the moment that administers the Welfare program for the state and the state reimburses Greenwich for that.

Judge Blumenfeld: Don't all towns make available welfare in emergency cases and get reimbursement from the state?

The Witness: Yes, your Honor. But I understood the question to be a state function under the statutes performed by the town. I think that's a little different.

Judge Blumenfeld: How does this work? If the City of Hartford or Waterbury makes available emer- [22] gency welfare assistance and gets reimbursed by the state, is that a separate contract in each case?

The Witness: No, it isn't. That's a function of the city, of the municipality, until the person becomes eligible for state assistance.

Judge Blumenfeld: Right. That's a function. But are they reimbursed by the state?

The Witness: Yes, your Honor.

Judge Blumenfeld: And that occurs by reason of the statute?

The Witness: Yes.

Judge Blumenfeld: All right.

By Mr. Satter:

Q. Were there any other kinds of similar financial arrangements between the State of Connecticut and the various towns in which towns render services which are reimbursed by the state? A. Oh, yes, there are many. Particularly in the education area, where state statutes require towns to perform, carry out certain educational programs or permit them to carry out educational programs for which the state will reimburse on a percentage or cost-sharing basis.

Q. How about in the area of health, for example? A. Yes, there are in the area of health, in almost [23] every broad program area.

Q. That is, in almost every broad program area there are situations and instances where the towns perform functions for which they receive reimbursement from the state? A. Yes.

Q. Now, did you prepare at our request a list of state aid grants by the state to the towns for various purposes? A. Yes, I did.

Q. And is this that list that you prepared? A. Yes, that's the list.

Q. Would you just glance at it and just briefly summarize some of the kinds of grants that are made by the state to municipalities? A. Under two broad categories of grants; first, those in which the state pays an amount by statute regardless of whether the town performs any service—in other words, not in reimbursement of town expenditures; and then there are those in which the state reimburses a share of town expenditures.

In the first instance, the first group, there are Highway Town Aid and there are Education grants where we pay a per pupil—the state pays a per pupil cost every year.

Then there are programs for disadvantaged children under which the state distributes based on a formula. There are property tax relief grants that are called Block Grants [24] based on population formula and—

Judge Blumenfeld: As long as this is an exhibit, why does the witness have to read all this into the record?

Mr. Satter: I just wanted to have some explanation.

All right. May I submit this as an exhibit.

Mr. McCarthy: I will make the running technical objection, your Honor, to the exhibit as well as to the basic testimony in the sense that the relevancy of town line cuts is primarily for the consideration of state courts.

But I forebear the continuing objections under our federal rules and I am quite happy, really, to stipulate the entirety of what this witness is offering because I regard it as essentially irrelevant.

Judge Blumenfeld: Is there any objection to this tendered exhibit?

Mr. McCarthy: The same technical objection as before.

Judge Smith: Overruled. Plaintiffs' Exhibit 2.

(Plaintiffs' Exhibit 2: List of State Aid Grants, marked full exhibit.)

Judge Blumenfeld: Is there anything else of this witness, Mr. Satter?

[25] Mr. Satter: No. I just want to get this exhibit.

Mr. Beizer: I have no questions.

Mr. McCarthy: No questions.

Judge Blumenfeld: You are excused, Mr. Donohue.

(Witness excused.)

[26] **Richard W. Lafferty,**

called as a witness, being first duly sworn, was examined, and testified as follows:

The Clerk: State your name.

The Witness: Richard W. Lafferty.

The Clerk: And where do you live?

The Witness: 11 Sunrise Terrace, Simsbury, Connecticut.

Direct Examination

By Mr. Satter:

Q. Mr. Lafferty, where are you employed? A. I'm employed by the Connecticut Public Expenditure Council in Hartford.

Q. And have you been involved in the study of town government in this state? A. Yes, I have. As part of my duties at the Council I'm the Director of the Municipal Consulting Service and part of my responsibilities are to examine local government in Connecticut.

Q. Just briefly describe what the role and function of the Connecticut Public Expenditures Council is with respect to

state and town government? A. We're a privately-financed government research agency founded in 1942 and we have two specific areas of interest: generally state government research and municipal consulting.

[27] My capacity with the Council is Director of their Municipal Consulting Service and, in summary statement, the Council is interested in efficient responsive local and state government. We conduct research pursuant to these goals.

Q. Now, have you determined how many towns there are in the State of Connecticut with a Town Meeting form of government? A. Right now there are 101 towns in the state out of 172 towns and cities that have what we describe as the open town meeting. This is the general town meeting where the town meeting, under the state statutes, functions as the legislative body.

In addition to that, there are 7 towns in the state that have what is described as a Representative Town Meeting, functioning as the legislative body in the towns.

Also we have 28 towns in the state where the town meeting still exists, but in a limited capacity. In other words, its responsibility legislatively is enumerated in certain and limited to certain specific areas.

Q. And when there is an Open Town Meeting form of government what does that mean in terms of the citizen's participation in town affairs? A. Okay. The Open Town Meeting functions as the legislative body and convenes at least twice a year under the [28] statutes; once for the annual adoption of the budget and a second time for what they call consideration of any items that might properly be brought before the town meeting.

Eligibility at the town meeting covers all voters and all citizens, residents of the town and non-residents who happen to own at least $1,000 worth of property on the grand list. So it's open to all voters and the citizens that I've just described.

Q. And what is the role and function of citizens, residents of the town under a Limited Town Meeting form of government? A. Well, basically it's the same role and function, only the areas that are considered to be the responsibility of the town meeting are limited to certain specific responsibilities; such as the adoption of the annual budget, the purchase and sale of real estate, the approval of bond issues. And these are enumerated in the local charter.

Q. And what is the role and function of citizens of a town under a Representative Town Meeting form of government? A. In the Representative Town Meeting the voters elect representatives to basically sit in their town meeting. It is not an open town meeting where all voters and other citizens can come and voice their opinions, and so forth, and vote.

In this case you have a specific number of representatives who are elected by the balance of the voters to [29] represent them are what we call a Representative Town Meeting. So it's a representative body of the voters.

Q. Do you have a list of towns, not a total list but a specific list of towns which have the Open Town Meeting form of government with you? A. I did not bring it with me, Mr. Satter. I'm sorry.

Q. All right. May I ask you, then, whether or not the following towns have an Open Town Meeting form of government: Burlington, Haddam, North Haven and Redding? A. Yes,they do.

Q. And do the following towns have a Representative Town Meeting form of government: Fairfield, Groton and Westport? A. Yes.

I'd just like to comment on the Groton situation, if I may. They have a Representative Town Meeting in the Town of Groton. They also have a Town Council. It's the only situation in the state where we have a bicameral legislative body on the local level.

Q. And do the following towns have a Limited Town Meeting form of government: Bloomfield, Granby, Kill-

ingly, Ledyard, Montville, Vernon, Watertown and Windsor? A. Yes. They all have Limited Town Meeting.

Q. Now, even in towns which do not have a Town Meeting form of government, as you have described it, but have a mayor [30] or a council and city manager form of government, do citizens operate politically in the affairs of that town? A. Yes, I would say they do. An example of this would be the mechanism of initiative and overrule that is built into many city and town charters where there is no town meeting in any form, limited or otherwise. And this gives an opportunity to the voters to petition for either the initiation of an ordinance or the overrule of an action of a town council upon the submission of X per cent of the voters, which would carry right to townwide referendum. So there is a direct participation, even in the absence in most cases of any form of the town meeting.

Q. And how about town referenda on such issues as bond issues? A. Many town charters do stipulate that any bond issue in excess of a given amount, such as $250,000 or $500,000, must automatically go to townwide referendum. This is the case in Hartford, West Hartford and many other towns.

Q. These are towns not with any kind of Town Meeting form of government, but towns which even have a mayor or town council and city manager form of government? A. That's correct. In those two cases that I cited there's no semblance of a town meeting.

Q. And then even apart from the instances of citizen participation, of course, citizens vote in towns for local [31] town councils and for mayors and for boards of education, et cetera? A. That's correct.

Mr. Satter: No other questions.

Mr. Beizer: No questions.

Mr. McCarthy: No questions.

Mr. Cannon: No questions.

Judge Blumenfeld: You are excused, Mr. Lafferty.

(Witness excused.)

[32] **Thomas Vocelli,**

called as a witness, being first duly sworn, was examined, and testified as follows:

The Clerk: State your name.

The Witness: Thomas Vocelli, 144 Carmalt Road, Hamden, Connecticut.

Judge Blumenfeld: How do you spell your last name?

The Witness: V-o-c-e-l-l-i.

Judge Blumenfeld: Are you an official of some sort?

The Witness: For more than a year, your Honor, I've worked on reapportionment material and census data pertaining thereto.

Mr. McCarthy: Could we hear that again?

The Witness: For more than a year I have worked on various aspects of the reapportionment problem and the various census data and maps that pertain to it.

First I worked for the Reapportionment Committee of the State Legislature, and following that for the Special Commission already alluded to, and then with various members of the Board. And more recently I've been working with the plaintiffs.

Judge Blumenfeld: When you worked for these [33] official bodies, who paid you?

The Witness: Generally speaking, for the most part it was the state legislature because I was originally hired as a staff worker of the Reapportionment Committee of the State Legislature.

Later there were other financing mechanisms. But for most of our pay it has been the state legislature.

Direct Examination

By Mr. Satter:

Q. In your capacity of working for the LegislativeReapportionment Committee of the State Legislature did you become familiar with the 1970 census data? A. Yes, I did.

Q. Did you also become familiar with the population—

well, with the votes—let me withdraw that and start the question again.

Did you also become familiar with this census data in terms of individual towns throughout the state? A. Yes, I did.

Q. And you worked with this data with the Legislative Reapportionment Committee during the 1971 session of the Legislature? A. Yes, that's correct.

[34] Q. And helped to develop plans for the Legislative Reapportionment Committee? A. Yes. It was really a number of things; developing plans, making different analyses based on the census data, making different cuts of various towns where they had to be cut. Just working up various suggestions. Also an awful lot of map work in terms of transferring the census data from the census maps to a more manageable form.

Q. And when the 1971 legislative—withdraw the question.

When the Legislative Reapportionment Committee, that is, the Reapportionment Committee consisting of state legislators, such legislators ceased to function and an eight man Commission was appointed, did you also work with that eight man Reapportionment Commission? A. Yes, I continued on as a staff worker for it.

Q. And when that ceased to function, that is, when the constitutional deadlines passed, did you also work with the Reapportionment Board? A. Yes, I did.

Q. And in all those capacities you performed essentially the same function of working with the census data? A. That's correct.

Q. Of applying it to the various towns and of helping to create plans in accordance with specifications as established [35] by members of those various legislative committees commissions or boards? A. That's correct.

Q. First, I show you a map which purports to be the Board House Plan, 151 districts, and ask you whether that map is a fair representation of the Board Plan with respect

to the House of Representatives? A. Yes, I would say it is. It's a good approximation.

Mr. Satter: May I introduce this in evidence.

Mr. Beizer: No objection.

Mr. McCarthy: No objection.

Mr. Satter: I don't believe this has been introduced. You see, the reapportionment Plan itself does not have a map which enables you to see what it looks like.

The Court: That is Exhibit 3.

(Plaintiffs' Exhibit 3: Map for House, marked full exhibit.)

By Mr. Satter:

Q. Likewise, I show you a map of the State of Connecticut which is entitled, "Board Senate Plan, 36 Districts" and ask you whether or not this map is a fair depicture of the shape of the senatorial districts under the Board's set of plans. A. Yes, I would say it is.

[36] Mr. Satter: Is there any objection?

Mr. Beizer: No objection.

Mr. Cannon: No objection.

Judge Smith: Plaintiffs' Exhibit 4.

(Plaintiffs' Exhibit 4: Map for Senate marked full exhibit.)

By Mr. Satter:

Q. Mr. Vocelli, I show you a map of the State of Connecticut, on which is outlined Assembly Districts No. 50, 51 and 52, which was submitted as Plaintiffs' Exhibit A in the Saden deposition and I ask you whether or not that map delineating those particular Assembly districts is a fair representation of those Assembly districts on the Board Plan? A. Yes, that is.

Judge Blumenfeld: Are there many of these to be offered, Mr. Satter?

Mr. Satter: Yes, there are.

Judge Blumenfeld: Well, make them all available to counsel who will have to pass on them at one time so that we won't have to—

Mr. Satter: Excuse me.

May I ask counsel, then, that all the exhibits I'm about to introduce are exhibits which were introduced in the Saden deposition and if nobody has any objection I can just do it very quickly.

[37] Mr. Cannon: No objection.

Mr. McCarthy: No. If these are identical with those we saw during the depositions of Judge Saden and Mr. James Collins, they are perfectly agreeable to us as exhibits; reserving, of course, objections to their evidential relevancy.

Mr. Satter: Well, I might just tell you, Mr. McCarthy, that in each instance the exhibit has the sticker of the state of the Reporter for that deposition.

Mr. McCarthy: Fine.

Judge Blumenfeld: Do you want to identify them for the record as you introduced them now, Mr. Satter?

Mr. Satter: Well, for each one I have to get some evidence respecting it. I'm not only just dumping them on your desk at the moment. I want to elicit some evidence.

Judge Blumenfeld: Which one do you want to elicit evidence about now?

Mr. Satter: Right now, the most recent one that was admitted.

Judge Blumenfeld: It hasn't yet been admitted.

Judge Smith: Plaintiff's Exhibit 5; 50, 51 and 52.

[38] (Plaintiffs' Exhibit 5: Board House Plan, Assembly Districts 50, 51 and 52, marked full exhibit.)

By Mr. Satter:

Q. Mr. Vocelli, Plaintiffs' Exhibit 5 shows that the Town of Killingly in the northeast part of the state has been cut in the formation of Assembly Districts 50 and 51, isn't that correct? A. Yes, that's right.

Q. Now, did you prepare another plan encompassing the same area of the State as in Plaintiffs' Exhibit 5, redesign-

ing Assembly Districts 50, 51 and 52 so as to avoid cutting the Town of Killingly? A. Yes, I did prepare such a—

Mr. McCarthy: If your Honors please, we shall object to the introduction of alternative plans until or unless the constitutionality of the Board Plan may be determined. The availability of alternative plans I do not believe is presently issuable.

Judge Smith: Objection overruled.

Judge Blumenfeld: Has that alternative been made an exhibit?

Mr. Satter: Now it will be.

Judge Smith: No. 6.

Mr. Satter: If you want to make it 5-A, it [39] might link them both together.

Judge Smith: 5-A.

(Plaintiffs' Exhibit 5-A: Alternate Plan, marked full exhibit.)

By Mr. Satter:

Q. Now, in Plaintiffs' Exhibit 5-A, which depicts a redesign of Assembly Districts 50, 51 and 52, is the deviation, the percentage deviation of population in each of these new districts redesigned within the deviation of the Board Plan? A. Yes, it is. It's within the outer limits or the outer deviations of the Board Plan. In other words, it has basically the same types of population deviations as the Board Plan.

Q. And it covers exactly the same area of the state in each instance? A. That's correct.

Q. And Plaintiffs' Exhibit 5-A avoids the cut of the Town of Killingly? A. That's correct.

Judge Blumenfeld: I'm not sure I got this correctly. Is 5-A a description of three districts: 50, 51 and 52?

Mr. Satter: Yes.

Judge Blumenfeld: And does 5 embrace three [40] districts also?

Mr. Satter: Yes, your Honor.

Judge Blumenfeld: The same three?

Mr. Satter: The same three exactly.

Judge Smith: And the same area exactly, the same overall area?

Mr. Satter: Exactly. Within the same parameter of the state. We haven't changed any other part of the state in order to accomplish that purpose.

Judge Smith: You switched within the area?

Mr. Satter: We switched within the area to avoid a town cut of Killingly. Exactly.

By Mr. Satter:

Q. Mr. Vocelli, I show you a map depicting Assembly Districts 64, 65, 67, 68 and 69, and ask you whether this is a fair reproduction of those districts, those numbered assembly districts on the Board Plan?

For purposes of identification for counsel, it is Plaintiffs' Exhibit B in the Saden deposition.

Mr. McCarthy: No objection.

Judge Smith: No. 6.

A. Yes, this is a fair approximation of the Board Plan of these areas.

(Plaintiffs' Exhibit 6: Board House Plan, [41] Assembly Districts 64, 65, 67, 68 and 69, marked full exhibit.)

By Mr. Satter:

Q. Now, in Plaintiffs' Exhibit 6 does it reveal that in the construction or design of Assembly Districts 68 and 69 the Town of Watertown is cut? A. Yes, it has been cut or it was cut by the Board Plan.

Q. Now, did you prepare an alternative plan of these same numbered districts in which the Town of Watertown was not cut? A. Yes, I did.

Q. Is this the map of that redesign of those numbered districts? A. Yes, that's the map.

Q. And does it encompass exactly the same geographic area as encompassed in Plaintiffs' Exhibit 6? A. Yes, it does. Just by shifting around within that area outlined in red one avoids cutting Watertown.

Mr. Satter: I will offer this in evidence.

Judge Smith: 6-A.

(Plaintiffs' Exhibit 6-A: Alternate Plan, marked full exhibit.)

By Mr. Satter:

Q. And in your alternative, Plaintiffs' Exhibit 6-A, did you avoid cutting the Town of Watertown? [42] A. Yes, I did.

Q. And in the redesign of the numbered districts did you keep within the same percentage deviation as in the Board plan? A. Yes, I did.

Q. Now, Mr. Vocelli, I show you a map outlining Assembly Districts 37, 48 and 45 of the Board plan. Is this a fair depicture of the shape of those districts on that Board plan? A. Yes. That's a very good approximation.

Mr. Satter: I offer it.

Judge Smith: 7.

(Plaintiffs' Exhibit 7: Board Plan, Assembly Districts 37, 48 and 45, marked full exhibit.)

By Mr. Satter:

Q. And in the Board plan was the Town of Montville cut twice? A. Well, in the Board plan the Town of Montville was divided into three different segments or divided among three different assembly districts.

Q. Among three different assembly districts? A. That's correct.

Q. Now, were you able to redesign a plan with respect to the same numbered assembly districts in which you could avoid cutting the Town of Montville and putting it into only [43] two assembly districts? A. Yes, I was. You can reduce the number of segments, so to speak, from three to two.

Q. From three to two. And is this what is described as the alternative plan, how you accomplished that? A. Yes, it is. In other words, most of Montville, the large part of

Montville is now in one assembly district and just a small piece in another, rather than dividing it into three segments as the Board Plan did. That's correct.

Q. And in this recreation of the same land area, geographic area, and the redesign of these two assembly districts, did you keep within the same percentage deviations as the Plan? A. Yes, I did.

(Plaintiffs' Exhibit 7-A: Alternate plan, marked full exhibit.)

Mr. Wade: With the Courts' permission, may we put the podium down on the floor to have some room here for these maps?

Judge Blumenfeld: Sure.

Mr. Satter: I'm sorry, your Honor. I just have to get a little organized.

(Pause)

By Mr. Satter:

Q. Now, Mr. Vocelli, I show you a design and ask you [44] to describe the assembly districts on this map for the Towns of North Haven and Hamden. A. Well, everything in red is the Assembly District 88. Everything in red involves Assembly District 88 under the Board plan, which involves a piece of North Haven and a piece of Hamden.

Now, there is another Hamden-North Haven district, there's another Hamden-North Haven district involving again a segment of North Haven and a segment of Hamden. And once again you have another segment of Hamden, this massive blue all the way down the town line that is hooked up with southern Cheshire, and in Hamden there is one district under the Board Plan totally under the town. That is in the yellow complex down here.

Q. What is the number of that? A. I believe the district wholly within the town is Assembly District 91.

And the two North Haven-Hamden districts, that is, the two that share are Assembly District 87 and 88.

Mr. Satter: Mr. McCarthy, may I show you something?

Mr. McCarthy: Yes.

Mr. Satter: I want to substitute a certain section of the Saden deposition of this in order to make the map clear, but I want to show it to you be- [45] fore I do so.

Judge Smith: Show it to him.

Mr. Satter: You have to come over here to see how I'm doing it on the easel.

(Off the record discussion.)

Mr. McCarthy: No objection.

Mr. Satter: First, your Honor, I would like to put into evidence this exhibit, which is Saden's Exhibit D and D-1 for Identification.

Judge Smith: Plaintiffs' Exhibit 8.

Judge Blumenfeld: There are two pieces.

Judge Smith: 8 and 8-A.

(Plaintiffs' Exhibit 8 and 8-A: Board Plan for Hamden and North Haven, marked full exhibit.)

By Mr. Satter:

Q. Mr. Vocelli, I show you another map of Assembly Districts 87, 88, 89 and 91 in the Towns of North Haven and Hamden and ask you whether that is a fair depicture of those assembly districts in those towns? A. Yes, it is. It is a fair approximation, a very good one. The district is joined by the Board Plan in those partcular towns.

Q. And is it the same exactly as Plaintiffs' Exhibit 8 for Identification, except that it eliminates some confusing cross-hatching and Senate lines? [46] A. Yes. It's exactly the same, except that it just takes off the Senate material so as to make the assembly districts more clear to one who is looking at it.

Judge Zampano: With your ruler, would you mark 87 and 88?

The Witness: 87 is the white area. Now, that's part of North Haven and part of Hamden.

88 is everything in red, which is again part of North Haven and part of Hamden.

89 includes part of Hamden which you see in blue here, plus southern Cheshire, which would be to the north, of course, of Hamden.

And the only assembly district wholly within Hamden, for that matter the only assembly district totally within those two towns is Assembly District 91, which you see in the Southern portion here in yellow.

By Mr. Satter:

Q. Also for purposes of being able to use this map, is one portion of it, one separate piece of it North Haven and the other piece of it Hamden? A. Yes, that's correct. That way you can separate and consider each town individually or both together.

Mr. Satter: May I then have these marked?

Judge Smith: I think we will make them 8-B and [47] 8-C.

Mr. Satter: All right.

(Plaintiffs' Exhibit 8-B and 8-C: Map of Hamden and North Haven, marked full exhibit.)

By Mr. Satter:

Q. Now, Mr. Vocelli, have you redesigned these same numbered Assembly Districts 87, 88, 91 and a part of 89 in order to reduce the number of—may I withdraw this a moment please.

May I have the previous exhibit. Referring again to Plaintiffs' Exhibit 8-B and C, how many segments or portions of towns have been used in the formation of the assembly districts depicted on this exhibit? A. Well, all told, you would have, by our definition of segments, you would have one, two, three, four, five.

By "segments" we mean a portion of the town used in forming a district not wholly within the town. So you would have the two pieces of segments.

Q. Would you point to your map? A. The two pieces or segments in North Haven each forming part of a district. And you would have one, two, three segments in Hamden, each forming part of a district not wholly within the town.

So what it boils down to is that Hamden has one district, yellow, 91 totally within the town. Then it has three [48] other pieces go every which way to three other districts.

Q. And to two other towns? A. Right.

Q. So the total number of segments then depicted on Plaintiffs' Exhibit 8-B is how many? A. There are five segments, by our definition of segments; yes.

Q. Now, have you redesigned those same districts Assembly Districts 87, 88, 89 and 91? A. Yes, I have.

Q. Within the same land area as the Board Plan? A. That's correct. Just the Towns of Hamden and North Haven.

Q. Is this a fair depicture of that redistricting? A. It is.

Mr. Satter: May I mark that, please.

Judge Smith: 8-D.

(Plaintiffs' Exhibit 8-D: Alternate Plan marked full exhibit.)

By Mr. Satter:

Q. In Plaintiffs' Exhibit 8-D would you show how many segments are thus created? A. Well, in the Towns of Hamden and North Haven we now have only two segments; that is, one portion of Hamden that is using a portion of a district not wholly within Hamden. [49] By the same token, only one portion of North Haven that is also used in forming a district not wholly within the town. Because what we did was create two districts entirely within Hamden and one district entirely within North Haven.

Q. So you reduced the number of segments from— A. Five to two.

Q. From five to two. And was the deviation in this redesign within the limits of the Board Plan? A. Yes, it was.

Q. Mr. Vocelli, I show you an outline of Assembly Districts 19 and 20 in the Town of West Hartford, which for purposes of counsel was submitted in the Saden deposition as Plaintiffs' Exhibit E. Is that a fair depicture of those assembly districts under the Board Plan? A. Yes, it is.

Q. Now, would you just describe which districts is which? A. Well, Assembly District 20 under the Board Plan begins in the southwest—excuse me—the southeastern portion of West Hartford and it moves all the way up in a rather jogging fashion, all the way up to the northwest corner of West Hartford. So it goes from the northwest to the southeast. That's Assembly District 20.

Now, Assembly District 19, also totally within West Hartford, jogs in a very inconsistent fashion. I can't really [50] give any description for it, but it just jogs out with all sorts of, I would say, rather odd movings about.

Mr. McCarthy: Your Honor. Conclusory.

Mr. Satter: Well, your Honor, I think it is a fair description of what is in front of us all.

Judge Smith: Without characterizing it as odd, I will sustain the objection as far as the characterization is concerned.

By Mr. Satter:

Q. And also would you just outline with your pointer Assembly District 18. A. Assembly District 18 is also completely within West Hartford. It's basically the northeast corner. And the balance of West Hartford is in the southern portion down here in the south and southwest. It goes to the Town of Farmington.

Q. There are figures on this map. Would you identify those figures? A. Those are the populations of the Board districts in question based essentially on a reading of the Board Plan and hooking up the census drafts and the census data outlined in the plan for those particular districts.

Then by going to a computerized M.E.D. list, one can

compute the essential population. And they all fall within [51] the normal parameters of the Board Plan populations.

Judge Zampano: And that little wedge is what, part of 21?

The Witness: Right. It's part of Farmington. It's part of the Farmington base district. Therefore it's only about 6,000, a little wedge, hooked up with the 14 some odd thousand people in Farmington.

Mr. Satter: May this be marked, please.

Judge Smith: 9.

(Plaintiffs' Exhibit 9: Map of West Hartford area, marked full exhibit.)

By Mr. Satter:

Q. Now, Mr. Vocelli, I show you a map of a redesign of the same Assembly Districts 18, 19, 20 and 21 in the Town of West Hartford, which for counsel's purposes was Saden's Exhibit E, and ask you whether you prepared this redesign? A. As a matter of fact, I believe my colleague did.

Q. But has it been designed within the same percentage deviations as in the Board Plan? A. Yes, it has.

Q. Each of the districts is within the same percentage deviation? A. Right. In other words, the districts all fall within the general parameters as outlined by the Board Plan; the [52] plus or minus 4 per cent.

Mr. Satter: Let me introduce this into evidence.

Judge Smith: Exhibit 9-A.

(Plaintiffs' Exhibit 9-A: Alternate Plan, marked full exhibit.)

By Mr. Satter:

Q. What does it show with respect to the shapes of the districts in the Town of West Hartford? A. Well, we feel by redesigning it that we accomplished a plan or a

format of reasonably rational shapes and that's why we did redesign it and they're all approaching, anyway, some sort of geometric design, I would say.

Q. And the deviation for each of these redesigned districts in Plaintiffs' Exhibit 9-A is within the Board's limitation? A. Yes, it is.

Judge Zampano: Are there any less segments?

Mr. Satter: No. There's no less segments. There is a segment of this town in both the Board Plan and this.

Judge Blumenfeld: And the part that does not comprise a full district within the town goes to add to Farmington to make up District 21?

The Witness: That's correct, your Honor.

[53] Judge Smith: The only change is in the symmetry or contiguity of the districts, or not contiguity, compactness?

The Witness: Yes, I would say there was considerable change in compactness. If you want to more or less make a quick comparison, I would say that Assembly District—well, I would say Assembly District 20 is now in the southeastern and a portion in the southern part of town; whereas, on the Board Plan, as we went through before, it stretches from the southeast all the way up to the northwest.

I would say, by the same token, Assembly District 19 is less than geometric on the Board Plan. And I would say that it approaches a more compact and more rational shape on the alternative.

By Mr. Satter:

Q. Mr. Vocelli, I now show you another design of Assembly Districts 12 and 13 in the Town of Manchester, which was Saden's Exhibit F. Is that correct? A. Yes.

Q. And is that an accurate portrayal? A. Yes, it is.

Mr. Satter: Mr. McCarthy, may I show you something here, please? I would substitute this [54] for that.

May I have this marked?

Judge Smith: Plaintiffs' Exhibit 10.

Mr. Satter: 10 for Identification. And here is Saden's Exhibit F.

Judge Smith: 10 for Identification.

(Plaintiffs' Exhibit 10 for Identification: Map of Manchester.)

By Mr. Satter:

Q. Mr. Vocelli, I show you again a plan or a map of the same assembly districts in the Town of Manchester, 12 and 13, as the previous exhibit, but without the cross-hatching and the Senate line. I ask you again is that a fair depicture of the outline of Assembly Districts 12 and 13 of the Town of Manchester? A. Yes, it is.

Mr. Wade: This will be?

The Court: 10-A.

(Plaintiffs' Exhibit 10-A: Replaced map of Exhibit 10, marked full Exhibit.)

Judge Smith: Is there an error in printing this copy of that that gave that dog-like figure an eye?

Mr. Satter: Yes. I'm sorry. I saw that myself. That was not to put an eye in it. I didn't [55] notice that till the other night.

By Mr. Satter:

Q. Have you endeavored to make a redesign of Assembly Districts 12 and 13 in the Town of Manchester in order to achieve more rational shapes? A. Yes, we did.

Q. And is that this design? A. That's right, that's the result of our endeavors.

Judge Smith: 10-B.

Mr. Wade: 10-C, I think, your Honor.

Judge Smith: 10 was for Identification; 10-A, the corrected one and 10-B the proposed.

Mr. Satter: I'm sorry.

(Plaintiffs' Exhibit 10-B: Alternate map of Manchester, marked full exhibit.)

By Mr. Satter:

Q. Was Plaintiffs' Exhibit 10-B prepared in order to achieve a more rational design? A. Yes, it was.

Q. Would you outline Assembly Districts 12 and 13 on Plaintiffs' Exhibit A and Plaintiffs' Exhibit B? A. On Plaintiffs' Exhibit A, which is the Board House Plan, Assembly District 12 is everything that is shaded in yellow here and Assembly District 13 of the Board House Plan is everything shaded in orange. It moves from the center of [56] town with a small neck over to the eastern part and then it also includes these orange portions up here.

Q. Would you identify the same assembly districts in Plaintiffs' Exhibit 10-B? A. In Plaintiffs' Exhibit 10-B, our alternative, again everything in yellow is Assembly 12 and it's just to the center of town, basically. And everything in orange is assembly District 13, which is this rather rectangular shape in the eastern portion of the town.

Judge Zampano: What happened up north? What did you do up there?

The Witness: On both plans a northern portion of Manchester is shared with South Windsor or goes to South Windsor forming the assembly district.

In the Board Plan it's this northwestern corner. And on the alternative that had to be shifted about a bit. And I would say that even this hopefully is somewhat a rational shape. It's the northern band across the whole town and it follows right along with the town border itself in Manchester.

The southwestern portion is maintained the same on both plans. It was maintained in tact; namely, the Board placed this southwestern portion with part of East Hartford and this alternative would do the same.

[57] Mr. Satter: Referring to Assembly District 9 when you are referring to the southwest portion?

The Witness: Right. So, in other words, the rearrangement involves Assembly Districts 12 and 13, which we hopefully made considerably more rational shapes and also—

Mr. McCarthy: If your Honors please, I hesitate to continue to press the objection, but a statement of relative rationality is certainly conclusory and I do not think evidential.

Judge Smith: Sustained.

Mr. McCarthy: The witness keeps testifying that his plan is more rational than another.

Judge Smith: If I understand your testimony correctly, this does not reduce the amount of segmentation. It is a question of shape of districts and more compactness or more regularity?

The Witness: That is correct, your Honor. This is just dealing with shapes rather than the segmentation. The segmentation or the amount of it remains the same under the alternative. We were just concerned with shapes in this case.

Mr. McCarthy: Your Honors understand my point of law, if you please, that compactness is not issuable under our federal precedent.

[58] Mr. Satter: Your Honor, of course, we differ with that.

Judge Smith: You may argue that. We will admit it and consider the question when we come to it.

I will overrule the objection at this time.

By Mr. Satter:

Q. I don't know whether I asked you this, but let me make sure that I do. The deviation in the percentage population deviation for the Board Plan, for your redesign of Assembly Districts 12 and 13 is within the Board deviation of limitations? A. Yes, it is.

Judge Blumenfeld: How many more of these have you got?

Mr. Satter: I'm sorry, your Honor. I have a few more

to give you. I'm sorry to do it this way, but I don't know any other way to get them in. I'll do them as quickly as I can.

Judge Blumenfeld: Maybe you can get them marked and set up so that they will be in order.

Mr. McCarthy: If your Honors please, we've been through this demonstration in deposition procedures and I have no objection to the introduction of any or all of these by stipulation consonant with the [59] pre-trial depositions which these pattern precisely.

Mr. Satter: Well, that's true, except that—

Judge Blumenfeld: Why can't they be introduced with a statement as to what they represent and as to what the witness would testify to and in that way avoid the necessity—

Mr. Satter: Yes, I can do that.

Judge Smith: We will take a short recess and you can get them in order and make a statement when we come back.

(Short recess.)

[60] Mr. Wade: If the Court please, during the recess the Clerk has marked several maps which are copies of the plan as prepared by the Board and then an alternative plan as prepared by Mr. Vocelli.

In each case the testimony is the same as you have already heard on these plans that have come in. We are showing the Court, in the first instance, the shape of the districts in various towns and then the same town redesigned with the districts meeting the deviation parameters set by the Board.

Simply for the record at this point, then, we would start with Plaintiffs' Exhibit 11, which is a representation of the Town of Bridgeport, the plan prepared by the Board; and 11-A would be the same town of Bridgeport showing a redesigned district with what we would claim to be more compact districts than appear on the Board Plan.

Judge Zampano: Can you give us the numbers, please?

Mr. Wade: Yes, your Honor. That was 11 and 11-A.

Judge Zampano: I know. But I mean—

Mr. Wade: It's the entire Town of Bridgeport with all its assembly districts. They would be Districts 124, 125, 126, 127, 128, 129, 130 and 131.

[61] Judge Zampano: And do I understand the segments do not change?

Mr. Wade: No.

(Plaintiffs' Exhibits 11 and 11-A: Board Plan and alternate for Bridgeport, marked full exhibits.)

Mr. Wade: The next would be Plaintiffs' Exhibits 12 and 12-A. The first being a representation of the Town of Norwalk showing Assembly Districts 137, 138, 139 and 140 as prepared by the Board.

12-A would be a redesign of those same assembly districts in the Town of Norwalk, the same four assembly districts and all four meeting the deviation parameters of the Board Plan, itself.

(Plaintiffs' Exhibits 12 and 12-A: Board Plan and alternate for Norwalk, marked full exhibits.)

Mr. Wade: The next would be Plaintiffs' Exhibit 13 and this shows in red Assembly District 15, which encompasses part of the Town of Bloomfield and part of the Town of Windsor. This is a representation of the district as prepared by the Board.

Plaintiffs' Exhibit 13-A would be the same Assembly District 15. This once again is just the Town of Windsor being shown here to show how Assembly District 15 can be redrawn with a small portion [62] of Bloomfield down here to meet the deviation standards and what we claim to be a more compact district than was previously drawn by the Board. That was 13 and 13-A.

(Plaintiffs' Exhibits 13 and 13-A: Board Plan and Alternate for Windsor, marked full exhibits.)

Mr. Wade: Finally we have Plaintiffs' Exhibits 14 and 14-A showing in yellow Assembly District 103, and in red Assembly District 104.

Plaintiffs' Exhibit 14 is the plan as prepared by the Board. And we offer it, first of all, to not the non-contiguity of Assembly District 104 in red. As you will note, there is a strip of yellow running down through the Town of Ansonia into the Town of Derby. The portion in red, all of that is in the 104th and there's two parts of it separated by the yellow which is in the 103rd.

Judge Smith: Are there people in that strip there?

Mr. Wade: I'm not prepared to testify to that, your Honor.

Judge Blumenfield: What town, though? Red is in what?

Mr. Wade: We are talking about three towns here, your Honor.

[63] You see, you have the Town of Woodbridge in the large yellow block here. The Town of Ansonia is within this segment right here. And the portion in yellow connects down into the Town of Derby. And the two are joined by that narrow yellow strip.

The two portions in red, which are in the Town of Ansonia here and in Derby here, are all part of the 104th.

Mr. McCarthy: If your Honors please, the answer to your question is available under the Plaintiffs Pre-Trial Factual Claims, Paragraph 4 at Page 2 indicating a population of this non-contiguous area as zero.

Mr. Satter: We concede that, your Honor.

Mr. Wade: Then Plaintiffs' Exhibit 14-A is a redesign only of the Ansonia-Derby portion. The Woodbridge section has remained the same, that large yellow block. We have redesigned Ansonia-Derby to make what we claim to be both a more compact and a contiguous pair of districts.

Judge Blumenfeld: And the population deviations?

Mr. Wade: Fits within the parameters of the Plan, your Honor.

We will endeavor to keep all of these pairs together so that when you have them each will be linked.

[64] Judge Blumenfeld: Yes.

(Plaintiffs' Exhibits 14 and 14-A: Board Plan and Alternate for Ansonia-Derby, marked full exhibits.)

By Mr. Satter:

Q. Mr. Vocelli, I show you now a map relating to Board Senate Plan and specifically Districts 35 and 29, which is Saden's Exhibit H, and ask you whether that is again a fair representation of the shape of those two districts in that? A. Yes, that is a fair representation.

Q. On the Board Plan? A. Right.

Judge Zampano: Excuse me, Mr. Satter. What were the district numbers?

Mr. Satter: I'm sorry. Senate Districts 29 and 35.

Judge Blumenfeld: Senate?

Mr. Satter: Senate. Did I say House?

Judge Zampano: No. You said Senate.

Mr. Satter: Senate Districts 29 and 35 in the, I guess you would call it, northeast corner of the State of Connecticut. And it is Plaintiffs' Exhibit 15.

(Plaintiffs' Exhibit 15: Board Plan, Senate Districts 29 and 35, marked full exhibit.)

[65] By Mr. Satter:

Q. I show you now another map purporting to redesign the Senate Districts 29 and 35 and ask you whether that redesign of these two senate districts keeps within the same percentage deviation as on the Board Plan? A. Yes, it does. I know this because I drew it myself.

Mr. Satter: This, I might say for your Honors, is Plaintiffs' Exhibit 15-A.

(Plaintiffs' Exhibit 15-A: Alternate Plan, marked full exhibit.)

By Mr. Satter:

Q. In Plaintiffs' Exhibit 15 is the Town of Mansfield segmented and cut? A. Yes, it is.

Q. What portion of the Town of Mansfield is segmented in Plaintiffs' Exhibit 15? A. Well, the western portion of Mansfield is taken to the 29th Senatorial District and the 29th, of course, is the eastern most of the two districts.

Q. And does the portion of Mansfield that is cut in the 29th and included within the 29th District include the University of Connecticut? A. Yes, it does. It includes Storrs, which I believe includes the University of Connecticut.

In your redesign of these two districts, which is [66] Plaintiffs' Exhibit 15-A, were you able to avoid dividing the town of Mansfield? A. Yes, we were.

Q. And still keep within the same deviation of limits— A. Right.

Q. —as the Board Plan respecting the Senate? A. That's correct.

Q. And did you also do this for purposes of making a more rational shape as to these two districts? A. Yes. We were also concerned about the shapes.

Q. I show you a map of the Board Senate Plan relating Senate Districts 9 and 31, which is Plaintiffs' Exhibit G in the Saden deposition, Plaintiffs' Exhibit 17 in this trial, and ask you whether that's a fair depicture of these two senate districts? A. Yes, it is.

Judge Zampano: Excuse me, Mr. Satter. 16 or 17?

Mr. Satter: I beg your pardon. That is 17. I made a misorder of this. That is 17 as it is marked here. I can go to 16.

I'm sorry. I picked up the wrong exhibit. Does it make any difference if I continue?

Judge Blumenfeld: Why don't you continue and we will adjust.

[67] Mr. Satter: I can do it the other way.

Judge Zampano: No. That's all right.

Judge Smith: Go ahead.

(Plaintiffs' Exhibits 17 and 17-A: Board Plan and Alternate for Senate Districts 9 and 31, marked full exhibits.)

By Mr. Satter:

Q. Can you show on this small design where the connection is between the Town of Newington and the Town of Farmington? A. Yes, you can. It's not too easy, but there is a connection here between Newington and Farmington. And both Newington and Farmington on the Board Plan are in Senatorial District 9.

Q. And have you looked at a M.E.D. list which would geographically demonstrate the actual boundary lines between the Town of Newington and the Town of Farmington? A. Well, yes. It is not a M.E.D. list. It's a census map and we have looked at it and it appears—these census may not always be perfectly accurate, but it appears that this connection between Newington and Farmington seems to be less than a thousand feet.

Mr. Satter: May I introduce this? It is Plaintiffs' Exhibit 18.

Judge Blumenfeld: What are you talking about, [68] the connection is less than a thousand feet? Can you point it out there?

Mr. Satter: Yes, your Honor.

This little strip right here. Here is the Town of Newington and here is the Town of Farmington and the only connection is this little strip right here (indicating). I will have further testimony on this.

Judge Blumenfeld: All right.

Mr. Satter: This is marked Plaintiffs' Exhibit 18, your Honors.

(Plaintiffs' Exhibit 18: Hartford urban area map, marked full exhibit.)

By Mr. Satter:

Q. Now, in order to avoid that very narrow thousand foot strip were you able to redesign Senate Districts 9 and 31 to show another shape? A. Yes, we were. And while the shape, itself, may not have been completely desirable, it did avoid that nexus, that small nexus of about a thousand feet which we just alluded to.

Q. And is this Plaintiffs' Exhibit 17?

Judge Blumenfeld: 17-A.

Mr. Satter: Well, they marked it 17. It should be 17-A, I guess.

Judge Blumenfeld: Do we have a 17 already?

[69] Mr. Satter: Yes. This must be A.

No. I beg your pardon. You are right. It is. It is 17-A.

Judge Smith: What districts are those in, 17 and 17-A?

Mr. Satter: 9 and 31.

(Plaintiffs' Exhibits 16 and 16-A: Board Plan and Alternate for Senate Districts 18 and 19, marked full exhibits.)

By Mr. Satter:

Q. Now, with respect to Senate Districts 19 and 18, I show you a map again and ask you whether that's a fair depicture of the Board Senate Plan?

Judge Blumenfeld: Are you now on Exhibit 16?

Mr. Satter: Yes, I'm on Plaintiffs' Exhibit 16.

A. Yes, that is a fair depicture.

Judge Blumenfeld: What districts?

The Witness: Districts 18 and 19.

Q. Now, in the design of Senate District 18 on the Board Plan is the Town of Norwich cut? A. Yes, it is. It seems that the southern portion of Norwich is in 18 and the balance of Norwich is in 19.

Q. Do you remember whether or not the Towns of Voluntown and Griswold were originally in the former Senate District 18? [70] A. Yes, they were. Voluntown and

Griswold were in the Senate District 18, that is, of the Plan, shall we say, or the setup that is now being used by the General Assembly but which will, of course, pass out of existence.

Q. And if you eliminated the Town of Voluntown alone and kept the district as it had formerly been shaped, would it have been within a deviation of less than the Board's senate deviation? A. Yes, it would have been. It would have been very close, reasonably close to perfect average. Certainly within the parameters of the Board's plan.

Q. Do you have any figures to indicate exactly what it would have been? A. Not right here at the stand. But I believe it would have been roughly a hundred people smaller or fewer than the 84,228 that is defined as the perfect average of a senatorial district.

Q. Did the Board Plan then, having had a district which was within its deviational limits, do further surgery to Senate District 18? A. Yes, they did. Instead of just withdrawing Voluntown from the present 18th and then leaving themselves with the district that hit the deviation, they in turn also removed Griswold and substituted for Griswold approximately the same number of people in southern Norwich, thus cutting the town [71] of Norwich.

Q. And taking out the whole Town of Griswold and cutting the Town of Norwich? A. That's right.

Q. And including a portion of the Town of Norwich? A. That's right. A portion in the south.

Q. Now, did you prepare an alternative to Senate District 18 which would have retained the Town of Griswold and not cut the Town of Norwich? A. Yes, I did. It was in line with what we were just talking about. This is, indeed, the alternative.

Q. And that is Plaintiffs' Exhibit 16-A.

Now, Mr. Vocelli, have you prepared a set of designs or outlines of the various Assembly Districts contained in this document? A. Yes, I did prepare this document or

the originals that went to the making of this document; yes.

Q. And is the outlines of the districts therein prepared accurate as depicted on the Board Plan? A. Yes.

Mr. Satter: I offer it.

Judge Smith: 19.

(Plaintiffs' Exhibit 19: Outline of Board Plan with maps, marked full exhibit.)

By Mr. Satter:

[72] Q. Mr. Vocelli, at my direction and at my request have you prepared an apportionment plan for the House of Representatives with a deviation of plus or minus 4 per cent? A. Yes, we did prepare such a plan with approximate deviations of plus or minus 4 per cent.

Q. And did you, at my request, have as the criteria for preparation of that plan simply to keep within a deviation of plus or minus 4 per cent, limiting the number of towns which had to be divided under that deviation and also keeping to the minimum the number of segments of towns that had to be divided? A. Yes. That was our order of priorities, that's correct.

Q. Is this that plan? A. Yes, it is.

Mr. Satter: May I offer it.

Judge Smith: 20.

(Plaintiffs' Exhibit 20: Plan within 4 per cent deviation.)

Mr. Satter: The exhibit would consist of a face sheet indicating its characteristics, to identify it for everybody, a face sheet indicating its characteristics; that is, the range of deviation, the ratio of the largest to the smallest and a column indicating this range of deviation by number [73] of districts and by cumulative frequency and also indicating the number of towns cut.

On the next page is the actual description of the plan in terms of the individual districts, each individual town

being assigned to specific districts, with the population in each of these districts, and the deviation from the perfect average.

And finally a map of this plan. If that can be all marked as one exhibit, your Honor, I think that might be helpful rather than dividing it up.

Judge Smith: It may. That's the 4 per cent plan. No. 20.

By Mr. Satter:

Q. Just for purposes of clarification, although we denominate it as a plus or minus 4 per cent deviation, in fact the range was from plus 4.02 per cent to minus 4.08 per cent, is that correct? A. Yes, that is correct.

Q. And under than plan, under that House Plan, how many towns are divided? A. I believe it's 36 towns that are cut or in some way have a portion taken out to form a district not wholly within that town.

Q. And how many segments of towns are created? A. I believe that plan created 49 segments.

[74] Q. Now again just for elucidation of the Court, what do you mean by a segment? A. Well, we have defined a segment to mean a portion of a town used in forming an assembly district that is not wholly within that town. So, in other words, when we say there are 36 towns cut, that means that yes, indeed, 36 towns in effect had their boundaries violated, but we also feel to project the, shall I say, true impact of any particular slicing on any given plan that you also should inject the factor of segments as we defined it because there are towns that have more than one portion taken out of them to go into several other districts outside the town.

Q. Have you, at my direction, also prepared a Plan of the House of Representatives with the same number of house seats as in the Board Plan and a plus or minus 6 per cent deviation? A. Yes, we have.

Q. Is this that plan? A. Yes, that's the plan.

Mr. Satter: I offer it.
Judge Smith: Exhibit 21.

(Plaintiffs' Exhibit 21: Plan within 6 per cent deviation, marked full exhibit.)

By Mr. Satter:

Q. Excuse me. I wonder, just to be sure because I don't [75] think I said it, with reference to Exhibit 20, which is the plus or minus 4 per cent deviation, the number of House seats were also 151? A. That's correct.

Q. The same as in the Board Plan, is that correct? A. That's correct.

Q. Now, the actual range of this plus or minus 6 per cent deviation, as we have denominated it, Plaintiffs' Exhibit 21, was a high of plus 5.88 per cent and a low of minus 5.97 per cent? A. That's right.

Q. And when you refer to high and low of these percentage deviations, again what are we referring to? A. Well, by that, when we say high we mean if a high is plus 5.93 per cent, or whatever it was, that means that the largest district, the district with the greatest population in any given plan deviates from the perfect average by plus 5.93 per cent.

By the same token, when we say a low of minus such and such a per cent, that means that the lowest or the smallest district in terms of population in the plan deviates from the perfect average by that given per cent.

And then when we go from high to low, naturally you are just summing the two numbers, the high percentage and the low percentage. In that way you get a total deviation from [76] top to bottom, so to speak.

Q. From the largest to the smallest? A. From the largest to the smallest.

Q. Now, under the plan in Plaintiffs' Exhibit 21, plus or minus 6 per cent deviation, how many towns are divided? A. It was a total of 31 towns that had their boundaries violated, so to speak.

Q. And how many segments of towns were created? A. I believe it was 39 segments that were created.

Q. Mr. Vocelli, again at my direction did you prepare a plan for the House of Representatives with 151 seats and providing for a deviation of 7.5 per cent? A. Yes, we did.

Q. Is this that plan? A. Yes, it is.

Mr. Satter: I offer it.

Judge Smith: 22.

(Plaintiffs' Exhibit 22: Plan within 7.5 deviation, marked full exhibit.)

By Mr. Satter:

Q. And are the actual deviations under this plan plus 7.43 per cent and minus 7.32 per cent? A. Yes, they are.

Q. And how many towns are divided under this 7.5 per cent plan? [77] A. 27 towns were cut or divided for a total of 35 segments in this particular plan.

Q. Mr. Vocelli, finally at my request did you prepare a House Plan in which no regard was to be given to avoiding the cutting of town lines, but simply you were to get to the lowest possible deviation for the House that was possible under the census data that was then available to the Board? A. Yes, that's correct. We just went down the deviation, forgot or basically forgot about our concern for town lines; right.

Q. And that is wherever, of course, you could avoid cutting town lines and get the lowest possible deviation you did. But where there was a choice between cutting a town line but getting to the lowest possible deviation, you chose to get to the lowest possible deviation; is that correct? A. That's generally correct, right.

Q. That was the standard you used in the development of this plan? A. Right. For that plan it was deviations that we focused on as low.

Q. Lowest deviation? A. Yes.

Q. Is this the plan that you prepared? A. Yes, that's it.

Mr. Satter: I offer it.

[78] Judge Smith: Plaintiffs' Exhibit 23.

(Plaintiffs' Exhibit 23: Plan with lowest deviation, marked full exhibit.)

Judge Zampano: How many towns were cut?

By Mr. Satter:

Q. How many towns were actually cut, although that was not a standard? A. I believe it was 58 towns.

Q. 58 towns were cut. And how many segments? A. 88 segments.

Q. And what was the actual deviation which you achieved? A. I believe it was a high of about 1.6 per cent and a low of 1.01 per cent.

Q. Just a few more matters, Mr. Vocelli. In the Town of Bristol certain block groups are omitted—excuse me. Let me withdraw that and start that sentence again.

In the Town of Bristol are there any block groups omitted from the description of the House Plan? A. Yes, there are.

Q. What block groups are they? A. Well, I believe it was—I forget the exact numbers they were in, but I believe it was block 2, 3 and 4 of one tract; 2, 3 and 4 of a second and block groups 2, 3, 4 and 5 of yet a third—for a total of about roughly 13 block groups that were omitted.

[79] Q. Now, if I just show you this Plaintiffs' Pre-Trial Factual Claims and ask you to look and identify the particular census tracts to which these block groups related? A. Right. In Bristol census tract 4052 had 3 block groups omitted and census tract 4054 also had 3 block groups missing. And census tract 4055 had 4 block groups that were omitted from the Board's Plan.

Q. And how many people can you determine from the census information lived in those omitted areas? A. Well, we computed that it was approximately 13,543.

Q. In the Town of Fairfield was there omitted a block group from the description of the Assembly Districts in that town? A. Yes, there was.

Q. Can you identify the block group number and the census tract to which it refers? A. It was block group 9 of census tract 604 in the Town of Fairfield.

Q. And how many people were involved, how many people does your census information indicate reside in that designated area? A. 89 people.

Q. Now, was there omitted from the description of Assembly Districts for the Town of Enfield a block group relating to a certain census tract? [80] A. Yes, there was.

Q. And what was the block group that was omitted and to which census tract does it refer? A. It was block group 2 of census tract 4807 in the Town of Enfield.

Q. And can you determine how many people resided in that particular block group? A. In this particular event it could only be an approximation. I couldn't get any exact determination.

Q. But there were some houses in that area? A. Yes. Apparently there were some houses in that area.

Mr. McCarthy: If your Honors please, these items appear paragraphed in the first four paragraphs of the Plaintiffs' Pre-Trial Factual Claims.

Mr. Satter: Your Honor, that doesn't constitute very much proof until we prove it, I think.

Judge Smith: Are they stipulated to?

Mr. McCarthy: I would stipulate to the fact that the description, in fact, omits these several census descriptions and that Assembly District 104 on the face of the plan is, in fact, nominally non-contiguous.

I, of course, dispute that it was intended to be that way and maintain that the intent of the Board was entirely to the contrary and that the plan may [81] easily be corrected in these minor particulars.

Mr. Satter: Will you also stipulate that the population figures that Mr. Vocelli has just related are accurate for the omitted census tracts for Bristol and Enfield?

Mr. McCarthy: I believe they are.

Mr. Satter: Excuse me. Bristol and Fairfield. Did you say yes, Mr. McCarthy?

Mr. McCarthy: Yes.

Mr. Satter: Will other counsel consent?

Judge Blumenfeld: Aren't these errors the subject of proceedings in the state court to secure a correction of the Board's plan in order to take account of these errors?

Mr. McCarthy: They are indeed, your Honors, and I have available a certified copy of the state court proceedings to demonstrate those in the course of the maintenance of our first defense of abstention.

Judge Blumenfeld: Is that right, Mr. Satter?

Mr. Satter: Is what all right?

Judge Blumenfeld: Is it correct that the rectification of these errors in the Board's plan is being sought in a proceeding in the state court?

Mr. Satter: Yes, that is correct, your Honor.

[82] Judge Blumenfeld: Is there any difficulty anticipated in having a correction made under judicial auspices in the state court?

Mr. Satter: Yes. I think there is considerable difficulty, your Honor, if I may say so. It is only one part of what has now become, I think, a fairly complex case.

Judge Blumenfeld: I'm not talking about the other parts.

Mr. Satter: I don't know of any procedure in the state court for dissecting one fact in a state court.

Judge Smith: Have these omitted people been counted toward the total number in the assembly district within which that area falls?

Mr. Satter: Yes, they have, your Honor. And the stipulation that is on file so specifies.

In the Stipulation of Fact that all the parties signed there is a census bureau statement of the population of each district and the census people have assigned to the particular assembly district the people which are omitted from the description of the plan.

Judge Blumenfeld: If they have been counted, then what is the significance of this evidence?

[83] Mr. Satter: To show that, in fact, they are disenfranchised in the plan, itself.

Judge Blumenfeld: You mean that although counted they don't fall within any of the lines within the plan or what?

Mr. Satter: Or with any description of the plan.

The Board Plan as such consists, if you will look at it, of a description of each of the assembly districts by reference to census tracts.

Judge Blumenfeld: Then you are saying that the lines that are drawn do not include these people?

Mr. Satter: No. What we are saying is that the description, the official description of the assembly districts, which is the Board's description, does not include these districts. There was no actual map submitted by the Board.

Judge Smith: These maps are made up afterward, not as part of the report of the Board?

Mr. Satter: They are not as part of the Board, yes.

Judge Blumenfeld: So then it is just a problem of map making in order to give effect to what the Board imperfectly described?

Mr. Satter: That's correct. I quite agree [84] with Mr. McCarthy; it's a very simple thing.

Judge Blumenfeld: Then why are we dwelling on it here?

Mr. Satter: We are going to get off it immediately.

Judge Blumenfeld: All right.

By Mr. Satter:

Q. Finally, Mr. Vocelli, Mr. Lafferty testified that certain towns have town meeting forms of government? A. That's correct.

Q. Namely, the Towns of Burlington, Haddam, North Haven, Redding, Fairfield, Groton, Westport, Bloomfield,

Granby, Killingly, Ledyard, Montville, Vernon, Watertown and Windsor. Are those towns divided in the Board House Plan? A. Yes, I believe all of those towns that you listed are divided or cut in the Board House Plan.

Mr. Satter: Your Honor, I have no further questions.

Mr. Cannon: I have no questions.

Mr. Beizer: No questions.

Judge Blumenfeld: Just a minute. I would like to ask Mr. Vocelli something.

By Judge Blumenfeld:

Q. You have prepared some redesigned districts that have been submitted here today and I ask you whether any of [85] those which are submitted as redesigns today were submitted to this Board before the Board made its final determination of the district lines? A. That would be difficult for me to answer in that sense, your Honor, because although I did quite a bit of technical work and analyses and such for various members of the Board, the House Plan and the Senate Plan that finally evolved from the Board's majority, I really can't say that I had very much input; at least not in the areas of concern that we have delineated here.

So whether or not, for instance—and Hamden is one of the examples—whether or not the artists or the drawers of the final plan, whether or not the alternatives occurred to them, well, I certainly couldn't presume to speak for those people.

Q. I see. Now, another thing. Exhibit 23 is a plan that you have drawn or a proposed plan for the House and it shows a deviation on the high side of 1.60 and on the low side of 1.01? A. That's correct.

Q. Now, to what do you attribute that deviation from mathematical exactness? A. Well, the problem is that when you are working with census data sometimes, shall we say, the size of the block groups in a particular area that you're moving aren't just [86] what you would have

them in terms of population. So as I remember it there were only four districts on that plan that exceeded plus or minus 1 per cent, and there was that high one that was plus 1.6 per cent and if I'm correct after that the other three that exceeded it were all pretty close to plus or minus 1 per cent, but just exceeding it by a bit.

Q. When you say a group, a census group—is that what you talk about? A. Right. In other words, when you draw a plan first you sit down with a map, a small map, generally speaking, and you draw up combinations of towns in which you think you might be able to fit so many districts.

Q. But a group consists of how many units, how many persons? A. Well, that really varies.

Q. That varies, too? A. Right. And sometimes when you try to draw one of these districts within your original combinations sometimes you can't get the exact population you're seeking because these block groups, as they are called, they are the smallest building blocks we had. They ranged anywhere from, I believe the figures are, 1—

Q. But you have to divide a group then to get mathematical exactness and there's no way of knowing who— A. Well, that's right. We didn't want to cut any census [87] block groups because then we would be making assumptions that may not be correct. In other words, we wanted to adhere strictly to census data that was available in time. We didn't want to make any rash assumptions as to estimates by cutting block groups.

Judge Blumenfeld: That's all I have.

Cross-Examination by Mr. McCarthy:

Q. Mr. Vocelli, you have testified that you worked for the Legislative Committee, the subsequent Reapportionment Commission, briefly before the Plan was filed September 30, 1971, for Judge Saden and Judge Parskey and Judge Thim, and finally now for the plaintiffs in this action; am I correct? A. Yes. I would say as far as—essentially

correct, sir. But I would say that it was somewhat more than briefly for the Board.

In other words, we worked for various members of the Board. First Judge Parskey and then toward the end of the Board's deliberations in more or closer contact with Judge Saden, of course.

But I wouldn't say it was necessarily briefly. We worked for the most part, if my memory serves me correctly, throughout most of the summer right on straight through.

There was a hiatus there between the Commission and the Board constituting itself. I don't really remember just [88] how long it was. But you are essentially correct, right.

Q. Would it be fair to state that during your relations with the Legislative Committee and Reapportionment Commission you were functioning essentially for the Democratic members of those groups? A. Yes, that would be a fair assessment of it.

Q. In reference to instructions you have received, if any, from Judges Parskey, Saden and Thim, in your activities on behalf of the conclusory Reapportionment Board can you recall and state your general instructions as to guidelines in the preparation of plans. A. Well, I would say, first of all, that I never had any dealings at all with Justice Thim. I've never had the pleasure of meeting him.

And as I remember it, when we worked with Judge Parskey he was basically concerned, if I'm not mistaken, he was concerned with questions of how certain districts would break down politically and such.

And what we originally started to do was take the old Commission—plans of the defunct Commission, they had failed to agree on these plans, and I think the first step he had us do is work out some revisions to see if anything would be feasible along those lines.

And then it was decided that no, it wouldn't, so we went to other variations and other combinations. And again [89] one of our prime concerns, if I remember it right or

I'm sure it was a concern even if it was unspoken, was to maintain a substantial population equality that runs throughout this whole procedure, of course.

And then in the last three weeks or so we worked, I'd say, maybe two weeks, we worked much more closely with Judge Saden and also with Mr. Robert Orcutt and Mr. James Collins. And at that point Judge Parskey had more or less passed out of the picture and we were instructed, of course, to lend our services more closely with the majority members of the Board. And we checked over plans and we helped them get out the final Plan.

Judge Blumenfeld: Who is this "we" you talk about?

The Witness: My colleague. In other words, another reapportionment analyst or whatever; Mrs. Karen Weiss. She was also hired at the same time I was to work for the Reapportionment Committee and then for the Commission and then for the Board, et cetera, et cetera. So that's why I often inject the "we."

Judge Blumenfeld: All right.

By Mr. McCarthy:

Q. Do you recall instructions from Judge Saden, in particular, and in conclusory stages of the development of what proved ultimately to be the Board Plan, Judge Saden's [90] instructions, guidance and direction with respect to the development of what he constituted as a fair plan politically? A. I do recall from discussions, if not with Judge Saden from Mr. Collins who worked closely with him, that they, yes, indeed did have a conception of what did constitute a fair plan.

Now, of course, we didn't or I didn't really get too much of a chance in the end there to effectuate that. At that point I was more in a checking function. But as I understood it, their conception of a fair plan was to set up a political balance, in other words, they would draw plans and they would check the 1966, '68 and '70 returns. And we

also did this, if I recall correctly. We also did it for Judge Parskey at times.

They would check various plans and options against the 1966, '68 and '70 legislative returns. The idea being that a fair plan or a fair political balance, as they put it, would be a plan in which a party's strength in a legislative body corresponds in proportion to the amount of popular vote it got in all the legislative races for that particular body throughout the state. And as I understood it, that was their conception of a fair plan.

Q. Let me read to you Paragraph 9 of the Plaintiffs' Pretrial Factual Claims in this particular.

"The assembly and senatorial districts in the Plan [91] were designed so that each major political party elected a number of its candidates to each house of the Legislature in proportion to each party's total state-wide vote for all of its candidates to that house. For example, if the total vote for all of the Republican candidates running for the office of state representative in all the various districts throughout the State was 51 per cent of the votes cast, then Republican candidates for state representative would win 51 per cent of the individual district elections, with reference to the depositions of Messrs. Saden and Collins."

Do you recognize that as a fair statement of your direction and intent? A. Well, as I understand it, that was—or as I undersood it, that was the direction and intent of the goal of the Board and of the members on the Board. And that, I think, corresponds to the way I described it; namely, the Board's, or at least the majority of the Board, it seemed to me that its intent was to achieve that proportional breakdown based on political election returns, yes.

Judge Blumenfeld: Mr. McCarthy, were you reading from something?

Mr. McCarthy: Yes, sir. I was reading from Mr. Satter's Pretrial Factual Claims, Paragraph 9.

Judge Blumenfeld: I see.

By Mr. McCarthy:

[92] Q. Do you recall, Mr. Vocelli, with respect to plans you prepared, at any time during your tenure in connection with reapportionment proceedings, what the deviations and maximum plus and minus were with respect to Senate or House, or both? A. Well, there are so many preliminary plans that it would depend on which phase and what plans. I would say that during the Committee stage of the process, that is, when the Reapportionment Committee of the General Assembly had jurisdiction and during the Commission phase I got the impression that the plus or minus allowable deviation for the Senate that was being bandied about was plus or minus 3 per cent.

However, the final senatorial plan that apparently the senate member of the Commission agreed upon brought it down considerably lower in the case of all except one district. In other words, I think the senate members of the second phase of the whole reapportionment process, that is, the senate Commission members, did tentatively agree on a plan with every district drawn and I think they got it down to close to 1 per cent in most instances.

Let me see now. I would say that a figure for the—and, of course, the Board of the senate reduced it to plus or minus 1 per cent on the final plan.

I would say there were an awful or a great number of percentage deviations that were experimented with and con- [93] sidered at various phases of it. One that sticks out in my mind, many throughout part of the process was plus or minus 5 per cent for the House. I know I did many plans at that. I did some higher, some lower.

As it turned out the Board, of course, settled on the basic parameters of plus or minus 4 per cent.

Q. Did you ever attain any completed plan with deviations overall in maximum less than those established in the plan promulgated by the Board? A. Well, yes. One of the plans entered as an exhibit had deviations that were less. It went from plus 1.60 per cent to minus 1.01 per cent.

Q. You are referring to Plaintiffs' Exhibit 23? A. I believe so.

Q. Which I understand you prepared for this suit? A. Yes. As a demonstration of what can be done, yes.

Q. Was that plan available to the Board? A. No, I don't believe it was. No, it wasn't

Q. When did you do it, Mr. Vocelli? A. I did it in working in conjunction with the plaintiffs. I did most of it—

Q. Subsequent to September 30th, 1971? A. Yes. The plus or minus 1.6 to 1.01 was done subsequent. Or I should say "we" didn't. I shouldn't take all the credit or blame myself, I suppose.

[94] Again, with respect to the doing of the Board in the composition of the ultimate plan, your recollection, if any, Mr. Vocelli, with respect to the maintenance of town integrity in the formation of House districts. A. Yes. I got the impression that again I wasn't privy to the negotiations and such that were carried on between Judge Saden, Judge Parskey or among Judge Saden, Judge Parskey and Justice Thim. But I got the impression that once it became clear and obvious that there would have to be some violation of the state prohibition against town cuts, I got the impression that after that concern about the integrity of town lines diminished to virtually nothing. In other words, there seemed to be no concern about it. Once it had to be violated once, that was it. That was my feeling.

Q. You, if I remember correctly, have testified that there is some considerable input into the finally approved Board Plan of antecedent developments in planning during the operations of the Legislative Committee and Reapportionment Commission. Can you recall, please, how much of the final plan is the product of those antecedent developments? A. I would say that in the Senate I believe there are several districts that are almost identical. In other words, they had been done before and they were in some of these files that are used. But I would say the Senate plan is largely changed. By the same token, the House

Board Plan was quite a [95] break of what was being bandied about before.

However, in certain specific areas where the number of seats assigned to the same town or combinations of towns remained the same, I believe that previously-drawn plans were incorporated into the Board Plan. But I would say—it is a rough guess—I would say no more than 15 out of 151 districts, 15 or 20 out of 151 districts on the Board House Plan and just several on the Board Senate Plan.

Now, in some cases there were coincidences, so to speak, where as you drew out the preliminary master plan some of the districts would come out the same; some of them multitown districts.

I got the impression that most of the cutting and most of the House and Senate Board Plans, not all, but most, were more or less done from scratch, except where it was convenient to do otherwise because of time factors.

Q. And do you recall any areas of basic agreement with respect to the composition of the House Plan, particularly between the Republican and Democratic elements of the legislature and the Reapportionment Commission? A. Could you rephrase that again?

Q. Yes.

Can you recall whether in the doings of the Legislative Committee and the Reapportionment Commission, both antecedent to the doings of the Board, can you recall whether there [96] were not substantial areas of agreement in various sections of the state as between Republican and Democratic contingents in the legislature? A. In other words—

Mr. Satter: Your Honor, I object to that. I do not see its relevancy.

Judge Smith: Overruled.

A. All right. You're asking me, as I understand it, were there negotiations and agreements during the Commission and Committee phase?

Q. Yes. Did the Republican and Democratic elements of the Legislature and Commission settle upon some areas of the state as matters of mutual agreement? A. Yes, they did.

Q. And would it then be fair to say that conclusively the Board filled in the remainder? A. I don't think it would be too fair to say that, no, because as I pointed out before the Board Plan did incorporate some sections, yes.

But I got the distinct impression—of course, I didn't offer or authorize or draw up the final Board Plan myself. But I got the impression that, for the most part, the majority of the Board was not too enamored with much that the Commission had and, for that matter, the Reapportionment Committee had virtually settled on.

[97] In other words, I got the impression that the Board majority felt, for instance, the Commission Senate Plan that was tentatively agreed upon was very poor. So for the most part it was back to the drawing boards by the Board. That's the impression I got.

Judge Blumenfeld: You did say, I thought, that about 15 of the assembly districts that were in the final Board Plan and considerable similarity to those in the Commission's Plan?

The Witness: Or things that were in the Commission's files. And I took that to mean, first of all, there was a time element. Here was something that was done and the particular area of town was done in the same fashion.

So I guess the authors of the Board Plan figured in areas alike that where they had no dispute with what had been done and by, say, the Commission, or whatever, and were fitted to their plan, yes, they did incorporate it.

Judge Blumenfeld: You said that that, you thought, was about 15 out of 151?

The Witness: Right. That's what I remembered as quickly now. I couldn't say whether it was more or less. I couldn't really sit down and count them.

But it seemed there were few errors where, yes, [98] they did incorporate from prior goings on. For the most part I got the impression that for the overall grand scheme, especially on the Senate, anyways, or for the overall master plan, the preliminary plans drawn up, I got the impression that the Board shied away from a lot of the Commission's ideas. So, therefore, they would pick and choose. But they did not feel constrained to make radical changes from what the Commission was working toward.

But again I wasn't really privy to the negotiations, per se, between the three judges.

By Mr. McCarthy:

Q. Do I understand all right that Plaintiffs' Exhibits 5 through 23, being the alternative segmentary plans, demonstrated in part on the easel, and then the overall 4 per cent, 6 per cent, 7½ per cent, 2.61 plans, Exhibits 20 to 23, are your work product since September 30th, 1971? A. For the most part, as far as I can recall, yes.

But again I'm sure there's some instances where perhaps in the interest of time if there was something in the files which met our criteria—and by our criteria I mean getting the substantial equality in rigorously reducing the number of cuts and segments—that I'm sure we incorporated or adopted. In other words, these were submitted, as I understand it, primarily as demonstrations to show what can be done [99] with this whole town segmenting concern.

Q. Do you have any specific recollection of displaying any of these plans to the Legislative Committee? A. To the Legislative Committee? Now by that you mean either the plus or minus 4, or the plus or minus 6 or plus or minus 7½?

Q. Any of these alternatives. A. No, I don't have any recollection of that because—

Q. Or any of these 4, 6, 7 and 2.61 plans? A. Let me see. I don't have any recollection of going over, in any great detail, any of this.

Q. How about the Reapportionment Commission? A. No. I would say the master plans, anyway, for all of these four alternatives or demonstrations for the master plan, the overall grand scheme, was drawn up I think after the Commission and the Board, as far as I can remember. So there wasn't any particular consultation with anyone.

Q. How about then with respect to any such submissions to Judges Parskey or Saden? A. No. I don't think any of these were submitted, per se, because again most of this handiwork or most of this work was done again after the Board submitted its plan.

As I said before, we worked in some things for Judge Parskey and as he passed out of the picture, after that it was certainly not to any great degree our interest; it was mostly [100] checking and rechecking. The plan that the Board majority had determined would be the plan submitted on September 30th.

Q. Do you recall, Mr. Vocelli, the circumstances in the development of the Board Plan for the Montville area, Plaintiffs' Exhibit 7, in which you have developed certain changes? A. Yes, I do recall it.

Now, I didn't personally witness or hear this, but I was told I believe by Mr. Collins, Mr. James Collins, that Judge Parskey had called Judge Saden, and this was after Judge Parskey had more or less—well, after he had been outvoted, so to speak. He had given Judge Saden a call and asked him what was going to happen to Ruby Cohen, who was a legislator from Colchester.

Again I'm just repeating what I remember or was told to me. And as it turned out apparently a change was made in that area, that New London County area, to facilitate Rubin Cohen's chances of winning re-election, I suppose.

Judge Blumenfeld: What did they take away from him or what did they give back to him?

The Witness: Well, apparently, if I remember right, they were tentatively settled on having the district of

Colchester, East Lyme and it's the town in between. It escapes me. But—

Judge Smith: Salem?

[101] The Witness: Salem. Colchester, Salem and East Lyme. Thank you.

And Rubin Cohen lives in Colchester and I suppose that district, from what I was told and from what I could see myself, would not have been too propitious for him. So as I was told by Mr. Collins, Judge Parskey had called Judge Saden and requested a change upon hearing that. And I was told by Mr. Collins that Judge Saden had agreed to make the change and the change involved or, as I understand it, was responsible for the additional segmenting of Montville unnecessarily.

In other words, he had to reshuffle quite a bit.

Judge Blumenfeld: He had to give part of Montville to Ruby Cohen's district, is that it?

The Witness: As I recall, that's what happened.

By Mr. McCarthy:

Q. Do you recall soliciting yourself directly, Mr. Vocelli, from the Board changes in the tentative Board Plan with respect to districts comprising Waterbury and New Haven? A. Yes, I do.

In Waterbury, if I'm not mistaken, it was a case where two incumbents were going to be placed in the same district and the Board was prepared to create two Waterbury-based districts. And as it turned out both incumbents in the Water- [102] bury area were to be placed in the same district.

Upon noticing I brought it to the attention of Mr. Collins and changes were made to separate the incumbents.

And also in New Haven, as I remember it Senatorial District 10, the Board was going to make it West Haven-New Haven; part of West Haven, part of New Haven. And as I recall, Senator Lieberman of New Haven was concerned about what portion of New Haven he had. And as

we were checking over the Senate plan with Mr. Collins Senator Lieberman came into the so-called Reapportionment Committee room. As it turned out, at that moment, we were checking over the New Haven census tracts for the senatorial districts.

So at that point Senator Lieberman saw what the Board was planning to give him and he asked Mr. Collins if it could be changed. And Mr. Collins said that he doesn't have the authority, that Judge Saden did. Judge Saden then walked in and Judge Saden gave permission—Judge Saden delegated the authority to Mr. Collins to make the changes involved that Senator Lieberman requested.

Q. With respect to Plaintiffs' Exhibit 8, Mr. Vocelli, comprehending your proposed realignment of Hamden and New Haven, considering—

Mr. Satter: Excuse me. That was not Hamden-New Haven. It was Hamden and North Haven.

Mr. McCarthy: Excuse me. North Haven.

Judge Smith: I think we will take our noon recess at this point until two o'clock.

(Luncheon recess.)

AFTERNOON SESSION

Judge Smith: You may proceed.

Mr. McCarthy: Thank you.

By Mr. McCarthy:

Q. I've tidied up just a small summary of eight more questions, including the one on which we had concluded in which I was inquiring, Mr. Vocelli, with respect to Plaintiffs' Exhibit 8 concerning Hamden and North Haven. Whether you would not agree, considering the population in Hamden and North Haven, that those two political entities would have to be cut, assuming a 151 seat House and a roughly 20,000 population? A. Yes, I'd agree that they do indeed have to be cut if we want substantial population

equality. However, the point of what was submitted as an exhibit was that they are excessively segmented.

In other words, I think the exhibits or the alternatives demonstrate that you—or, rather, one could, with a 151 seat setup, draw a plan so that the Town of Hamden would have two assembly districts totally within its boundaries and the Town of North Haven would have one assembly district totally within its boundaries.

But the Board, for whatever its purpose, excessively segmented it so that Hamden only had one district totally within and North Haven had no districts totally within; thus [105] shattering the integrity of the municipal subdivisions more than was statistically necessary.

Q. Do you recall, Mr. Vocelli, one Senate plan which essentially trisected the City of Meriden?

Mr. Satter: Your Honor, again I object to that as being just irrelevant. I don't understand what one Senate plan some place else means in terms of this case.

Mr. McCarthy: The next question I hope will make the relevancy apparent, your Honors.

Judge Smith: Proceed.

A. I think I do recall that during that phase in which we were working with or for Judge Parskey, whose input, of course, was eventually to be practically nil, I do believe that there was one series of plans or districts or cuts that we were doing for him that did entail what you described, if I recall correctly.

Now, whether or not he later revised it, I'm not sure. I do remember commenting either to my colleague or to him that it's certainly not desirable to cut a town in such a fashion. I don't recall just what he did about it. All I know is that certainly it never got anywhere.

Q. Do I understand you to be saying, Mr. Vocelli, that you are the author of that particular trisection and you did it for Judge Parskey? [106] A. Well, I myself, as far as I recall, was not the author. But working with my colleague I certainly, as I said, do recall such a trisection.

Now, which one of us drew it or whether it was Judge Parskey's suggestion, I can't recall that specifically. But it was part of material that we were doing for or submitting to him.

Now, whether or not what he was suggesting at that time mandated that sort of cut, I don't remember. But, as I said, the idea of a trisection does stand out in my mind and I do remember expressing my general distaste for such a cut. Now, whether it was to my colleague or to Judge Parskey, I'm not sure. But, of course, it went down the drain and nothing ever came of it, in any event.

Q. I asked you this morning with respect to your request for changes in the compositions in Waterbury and New Haven. May I inquire whether you made an additional such request with respect to an assembly district in New Haven?

Mr. Satter: Your Honor, again I simply object on the ground that what requests he might have made is just totally irrelevant to the issue in this case. I just can't see the relevance of it.

Here is a subordinate making a request when, where, to whom.

Judge Smith: Well, you had gone into, on Direct, the methods that were used and to some degree we will [107] allow Cross on it.

A. Yes, I do recall requesting that in New Haven an assembly district, I believe, one block group be moved. I think the purpose, if I'm not mistaken, was to keep two incumbents separate.

But as it turned out, although I was told that that change would be made because in any event it would have exceeded the population deviations, as it turned out that change was not made. I don't know what happened along the line, but what I had in effect raised a protest about was maintained. In other words, I made a suggestion. I made the request. But for whatever reason, when the plan was filed my input in that particular case or my suggestion was not even filed.

Q. Referring to Plaintiffs' Exhibit 19 I show you, in particular, Page 5, Assembly District 5 under the Board Plan? A. Yes, that's correct. That is Assembly District 5.

Q. Did you devise that district, Mr. Vocelli? A. If my memory serves me correctly, I believe that my colleague devised it, if I'm correct in that. I think that was most likely one of the, as I said, about 10 or 15 districts or cuts that the Board saw fit to draw right from prior files and to insert the plan in the interest, I assume, of convenience and time.

Q. May I inquire whether you have any particular characterization with respect to the shape of that district? [108] A. Yes. I would have a characterization. My feeling is that the neck in the center of the district is, shall we say, of strained contiguity. And if I were in a position of authority I would like to think that I would try to eliminate such a position of strain or, rather, such an example of strained contiguity and in drawing up these demonstration plans that we've submitted I made just such an effort and I feel succeeded in revising the Hartford situation.

So that that particular district which the Board saw fit to accept would not be there if I had my druthers, so to speak; if I were in position of authority.

Q. Showing you Defendants' Exhibit 1 for Identification, may I inquire whether you recognize this as the final Commission draft for the Senate? A. This would, at first glance, appear to be the final Commission draft. Of course, it's not too easy to make heads or tails out of. But since it is entitled, "Final Commission Draft" I would most likely say that, yes, it is. And by the Commission we mean the eight member body which never reached agreement, yes.

Q. That is correct. A. Yes.

Mr. McCarthy: I should like to offer this as a full exhibit.

Judge Blumenfeld: Any objection?

[109] Mr. Beizer: No objection.
Mr. Satter: No objection.
The Court: May be marked.

(Defendants' Exhibit A for Identification: marked full exhibit.)

By Mr. McCarthy:

Q. May I refer you specifically on that plan to the same geographical area concerned for the land bridge referred to in proceedings this morning. With respect to the Senate composition of the district comprising Newington and Farmington do you find that same configuration here? A. Yes, it's a similar configuration or phenomenon; namely, the very strained—or I would characterize it as an extremely strained contiguity such as to be an almost non-existent connection. Yes, that is present here.

Q. Did you present a Senate plan to Judge Parskey or develop one together with him? A. Well, as I said, we worked on numerous Senate cuts and revisions and we attempted to—as I also, I think, indicated earlier, as our starting point we attempted to revise some of the Commission data that had been bequeathed to the Board. And as I remember in the preliminary stages of my association with Judge Parskey, if I'm not mistaken this is one instance where both he and I agreed it would be certainly desirable, if at all possible, to do something to eliminate [110] that very phenomenon in Farmington-Newington that we're talking of.

Now, as it turned out, the Board itself did not see fit to eliminate it. But why, I don't really know.

And for that matter why the Commission, that is the four state senators serving on the Commission, why they chose to devise this I have no idea either, because my input on this particular area of the Senate plan while working for the Commission was non-existent or virtually non-existent.

Q. Now I understand, Mr. Vocelli, that during the last few days before the Board concluded its deliberations and filed its plan September 30th you worked directly with the Board? A. Yes, with the representative of the Board majority; namely, Judge Saden and also quite closely with Mr. Orcutt and Mr. Collins and there were other people involved, of course, in checking and rechecking.

Q. Under some pressure of time, would you say? A. I would say yes, there was pressure of time involved. There was a certain deadline that had to be met.

Q. Did you, yourself, check the population totals the final day, Mr. Vocelli? A. The way it worked, as I recall, was that in the House I did very little, if any, direct checking against the maps. And as far as the populations go, if I recall correctly, [111] I did some of the districts in terms of checking the populations, which all seemed to square off all right. But these were just on rough drafts. But I only did some of those. Maybe about 50.

Then I was placed on others at the instruction of my then superiors at that point; Mr. Collins, Judge Saden, et cetera. At that point the large part or the lion's share of my work in the last day or two, if I remember correctly, was checking the Senate plan that the Board was to submit against the census maps and, as I said, I had very limited input.

But we checked it to see that it did ndeed what its authors wanted it to do; namely, was the Plan valid in terms of being contiguous and such and were the population figures correct. And so we were basically acting as just mechanics or technicians and, as I also said, I made my few suggestions and in some cases they were followed, in some cases they weren't.

Q. Do you have any recollection of those last few days before filing of the circumstances which produced the apparent non-contiguity in House District 104? A. No, I have none whatsoever because, as I said, we—

Judge Blumenfeld: You have answered it. You know, it's all collateral.

Mr. McCarthy: I will pass that matter. Thank [112] you.

Q. (By Mr. McCarthy) In any of the plans you have devised, either partial or total, Mr. Vocelli, since the conclusion of the Board's doings and the filing of the official reapportionment plan, referring specifically to the plans you have since devised in part and in whole, did you make any political analysis of the consequences of any of those plans? A. I will say that after the fact, after the plans were drawn up and put on these maps, there was some political analysis for my own edification. But I can think of hardly any, if any, instances in which there is any change based on that. I think I can think of one on all of them.

I think the best way to sum that question up is that we had, or at least I can speak for myself, in drawing up these demonstrations we had three top priorities: It goes without saying, the equality; then within those constraints to rigorously reduce the number of towns cut and the excessive segmentation that some other plans or the Board's plan, in my opinion of course only, contains. And then again after those two priorities, to the extent possible, trying to make something that I would feel to be reasonably compact.

Those were the three top priorities and I can think of instances in which in the interests of that, shall we say, the technical superiority of the Plan, I did things that I'm sure would anger quite a few people on both sides of the aisle [113] if we want to turn it into politics. But I can think of very few instances, even though I did make some analyses, I can think of very few, if any, instances in which I made any changes based on the analyses.

Furthermore, never to my knowledge, absolutely never would I unnecessarily segment a town in order to achieve any political results, however much I may like it or dislike it.

Now what I'm saying is, to sum it up, that I did not

operate when I drew up these plans or I participated in their drawing up, I didn't operate on the basis of a preordained political standard of balance. I didn't sit down and say, well, based—

Judge Blumenfield: All right. You have answered it. He wanted to know whether you took political considerations into account and the answer, I guess, is no?

The Witness: Or it was very negligible. I told you in the one or two cases where—

Judge Blumenfield: Okay.

Q. (By Mr. McCarthy) In the work you did with Judge Parskey did you ever devise or present to him any House Plan? A. Yes, there was. First of all, I worked on revisions of the Commission Plan. Then for some reason, I forget just [114] what, it was decided that those were insufficient.

I did devise or present to him a skeleton plan. By a skeleton plan I mean the combinations and such. And that went through various phases.

I think in one phase it was plus or minus 5 per cent, and in yet another it was plus or minus 4 per cent. However, each and every district was not drawn out of that in its entirety. Whatever the reasons, why we weren't instructed to do that, I'm not really sure. But we were working more on the Senate than the House, on the instructions of Judge Parskey.

Q. With respect to the four plans you have subsequently devised, Plaintiffs' Exhibits 20 through 23 inclusive, showing various maximum deviations plus and minus, may I sum up as a fair analysis that town line cuts are inversely proportional to the degree of deviation? A. Yes, I would agree with that. In other words, as you increase the deviation that's allowable the number of towns segments and cut drops and, as you say, it's inversely proportional. Yes.

Q. With respect to Defendants' Exhibit 1, Mr. Vocelli, the so-called Commission Plan, to your knowledge was that ever approved by the full Commission? A. No. To my

knowledge the full Commission, that is, the eight member body, never formally met and approved any [115] plan at all.

Rather, it was apparent that the four senators serving on that Commission had reached, from what I could see, an agreement amongst themselves. But since the House was not met or was not agreed upon, the whole thing fell.

Judge Smith: You mean Defendants' Exhibit A.

Mr. McCarthy: I'm sorry, your Honor. Defendants' Exhibit A.

Q. One final question, if you please. Were any plans before the Board during the Board's period of work and deliberations, were any plans before the Board with smaller deviations maximum than those finally adopted? A. I do recall, this again was just a skeleton plan, a master plan as we call it, that I had given to Judge Parskey and I believe perhaps Judge Saden. I'm not sure. It was a rough master plan which would have had 125 districts and deviations of plus or minus 3 per cent.

Q. That's the plan—excuse me. A. But that was just a sample draft. But the Board, of course, apparently was more interested in 151 and a higher deviation.

Q. And that was a plan that blocked out the state engrossed without final delineation of specific assembly districts? A. That's correct.

Mr. McCarthy: No further questions. Thank you.

[116] Mr. Satter: No questions.

Judge Blumenfeld: How did you happen to draw up a rough plan with 125 districts instead of 151?

The Witness: Well, to tell you the truth, that I think when I actually drew it up it was during the Commission or early in the Commission or the Committee, I'm not sure which—

Judge Blumenfield: Well, it wasn't suggested to you by somebody?

The Witness: No. I just did it on my own.

Judge Blumenfield: All right.

(Witness excused.)

[117] **George Heilpern.**

called as a witness, being first duly sworn, was examined, and testified as follows:

The Clerk: State your name.

The Witness: George Heilpern, H-e-i-l-p-e-r-n, 40 Lexington Road, West Hartford.

Direct Examination

By Mr. Satter:

Q. Mr. Heilpern, you are a photographer? A. I am.

Q. And have you many times testified in court about the introduction of pictures? A. Yes, sir.

Q. At my direction did you go to the boundary line of the Towns of Newington and Farmington and inspect that boundary line? A. I did.

Q. And is that boundary line between those two lines about a thousand feet? A. Measuring the map and looking at it, between 500 and a thousand feet. Slightly under a thousand.

Q. Are there any roads or any means of communication between those two boundaries of Newington and Farmington? A. There is no road east-west in that area.

Q. No road going from Newington to Farmington or Farmington to Newington? [118] A. That is correct.

Q. So to get to either of those towns you have to go through another town, is that correct? A. You would have to go around by some other area.

Q. And what is the terrain in that narrow strip of land? A. Well, Route 71, which goes southerly from Corbin's Corner, goes almost parallel to this boundary and it is on a ridge of land on each side of it, both to the east and the west. It goes down very sharply some thirty, forty, fifty feet and is essentially woodland and swampland. Mostly swampland.

Q. On both sides of the boundary line? A. On both sides.

Q. Did you take some pictures of it? A. I did.

Q. Have you got some pictures showing that boundary line, standing on the boundary line looking into the Town of Newington? A. I have.

Q. Are these pictures a fair representation of the nature of the terrain standing on the boundary line of Newington-Farmington looking into the Town of Newington? A. They are.

Mr. Satter: May I offer them all at this time? [119] I just want to make a very simple quite point.

Any objection?

May I have all of this group marked whatever the number is, A, B, C and D?

Judge Smith: Exhibits 24-A, B, C and D.

(Plaintiffs' Exhibits 24-A through 24-E: Photos of Farmington-Newington line marked full exhibits.)

By Mr. Satter:

Q. Have you similarly, Mr. Heilpern, taken photographs standing on that same boundary between Newington and Farmington looking toward the Town of Farmington? A. I took the pictures of Farmington. I was not standing on the boundary because I had to go across the highway. But it's essentially at the boundary.

Q. And do you have those pictures? A. I have two groups; one of the southerly portion and one of the northerly portion.

Q. Are these an accurate portrayal of the terrain on the boundary line, or virtually on the boundary line between Newington and Farmington looking towards the Town of Farmington? A. They are.

Judge Smith: Is that the area that the shopping center is going into?

The Witness: Immediately south of it, sir.

[120] Mr. Satter: Do you have any objection?

Mr. Beizer: No objection.

Mr. Satter: May they likewise be marked?

Judge Smith: How many are there?

Mr. Satter: I think there are five.
The Clerk: There were five in the first ones, your Honor.
Judge Smith: A, B, C, D and E.

(Plaintiffs' Exhibits 25-A through 25-E: Photos of Farmington-Newington area, marked full exhibits.)

Mr. Satter: No further questions.
Mr. Beizer: No questions.
Mr. McCarthy: Just one.

Cross-Examination

By Mr. McCarthy:

Q. Do you drive a car, Mr. Heilpern? A. Yes, sir.
Q. Ever manage to drive between Newington and Farmington, or vice versa? A. I can't recall whether you can go directly or not.
Q. I didn't ask about directly, thank you. A. Directly?
Q. No. I didn't ask about directly.
Have you ever managed to drive directly or indirectly [121] between Newington and Farmington, or vice versa, over the public roads? A. I would have to look at a map and see the town lines. I don't know.
Mr. McCarthy: No further questions.

(Witness excused.)

Mr. Satter: Mrs. Osborne.

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[122] **Jean Osborne,**

called as a witness, being first duly sworn, was examined, and testified as follows:

The clerk: Will you state your name.
The Witness: Jean Osborne, O-s-b-o-r-n-e.
The Clerk: And where are you from?
The Witness: Ledyard.
Judge Blumenfeld: Osborne?
The Witness: Osborne; O-s-b-o-r-n-e.

Direct Examination

By Mr. Satter:

Q. Mrs. Osborne, you have given your address, I presume? A. Yes.

Q. You live in Ledyard, Connecticut? A. Right.

Q. And are you presently in the Board's 18th district? A. Yes.

Q. And were you in the 18th district prior to the Board's Plan? A. Yes.

Q. What was the margin of victory for the senatorial candidates in the 1966 election? Do you remember? A. In 1966? Roughly 372 plurality. And that was the first year it was.

Q. And how about 1962? A. A little bit less; 280, something like that.

Q. And in those two instances it went Democratic? [123] A. It went Democratic.

Q. Do you know what the approximate number of people in that district were? A. In the entire 18th district?

Q. Yes. A. The population of it?

Q. Yes. A. 85,5. May I look and give you—

Q. Approximately 85,000? A. 85,500, right.

Q. And the plurality in 1966 had been about a hundred or so and in 1968 by a couple hundred? A. 1966 by almost 400. I'm sorry.

Q. And in '68 by? A. Almost 300.

Q. Of a district of 85,000? A. That's right.

Q. And in 1970 who won that district? A. The Republican.

Q. And what was the margin of victory? A. 116 votes.

Q. 116 votes? A. I know that exactly.

Q. So it is fair to say that in the three previous elections that was a very swing district? [124] A. Very much so always.

Q. And a very close district? A. Yes.

Q. Now, you have heard testimony to the effect that this district under the Board Plan, the 18th district under the Board Plan has been constructed by taking out the Town of Griswold and putting in a portion of the Town of Norwich? A. Yes.

Q. What do you believe would be the consequences—excuse me. I will withdraw the question.

Are you a Democratic State Committeewoman? A. Yes, I am.

Q. State Central Committeewoman? A. Yes, I am.

Q. In the 18th district? A. Yes.

Q. And are you familiar with the votes in those areas? A. Yes. Very much so.

Q. And are you familiar with the voting records of the towns in those areas? A. Yes, yes.

Q. And what has been the history of Griswold? What has been the voting record of Griswold? A. It has been, in a predominantly Republican area, the so-called shining light for the Democrats; they have a [125] majority of Democrats of approximately 10 to 1 registration.

Judge Blumenfeld: In Griswold you are talking about?

The Witness: Griswold, right. About a 10 to 1 Democratic registration. And we have usually looked for a 12 to 1400 plurality out of Griswold.

Q. (By Mr. Satter) And by the inclusion of Griswold into the 18th Senatorial District—excuse me. I withdraw that question.

By excluding Griswold from the Senatorial 18th District and the inclusion of that southern section of Norwich, what do you believe the net effect of that would be in terms of turning that district from a swing district into something else? A. I don't see how we'd have a chance of ever electing a Democrat in the 18th District again.

Q. As a consequence of this change? A. Absolutely.

Q. It turns it from a swing district into a solid Republican district? A. Yes, as far as we can determine.

Judge Smith: Is there really any dispute on the facts as to whether the Board did attempt to use the so-called fairness of principle in laying out its House Plan so that it would reflect as fairly [126] as possible the proportion of votes over the last three elections in the House makeup?

Mr. McCarthy: Not for myself, your Honor.

Mr. Satter: In terms of the way it is expressed in the depositions by Collins and Saden, we don't dispute that. In fact, we shall argue from it, as you will soon hear.

Judge Smith: Do we need testimony on it?

Mr. Satter: I'm not going to put any more evidence on. That's it, as far as we are concerned. That was only to show an instance of what the consequences were.

That's the end of my testimony. As a matter of fact, we are going to rest, except for one thing about getting the depositions in. This is the end of it.

Judge Blumenfeld: Is there any cross-examination of Mrs. Osborne?

Mr. McCarthy: No, your Honor.

Judge Blumenfeld: You may step down.

(Witness excused.)

Mr. Satter: Your Honor, then we would, I understand by agreement of parties, introduce the pretrial deposition of Mr. Saden and Mr. Collins.

Is that correct?

[127] Mr. McCarthy: That is correct.

Mr. Satter: Now, I think the Court must have the originals of these. Isn't that correct?

Judge Smith: We had copies of some excerpts.

Mr. Satter: Excerpts. But the original should be in a court.

I specifically asked the reporter to have them submitted because we all had this as part of our plaintiffs' brief.

If they are admitted as exhibits, that, then, would terminate our case.

Judge Smith: They may be admitted and marked, when you find them, Exhibits 26 and 27.

(Plaintiffs' Exhibit 26: Deposition of Judge Saden, to be marked full exhibit.)

(Plaintiffs' Exhibit 27: Deposition of James Collins, to be marked full exhibit.)

Mr. Satter: Unless the Court wants an extra copy. Would your Honors want—

Judge Blumenfeld: We have copies.

Mr. Satter: Those are only parts.

Mr. McCarthy: I have an unmarked pair. They are my only pair.

Mr. Satter: I don't think that's fair.

Judge Blumenfeld: We will find them.

[128] Mr. Satter: They are available, I'm sure.

Mr. McCarthy: They may be in New Haven.

Judge Blumenfeld: Possibly.

Is there any question about these excerpts that have been furnished to the Court?

Mr. Satter: Those are just excerpts. They don't mean anything. They are just photostats.

You have a right to see the whole thing. These are, obviously, excerpts.

Judge Blumenfeld: All right.

Judge Smith: Plaintiffs rest?

Mr. Satter: Your Honor, this plaintiff rests.

Mr. Beizer: Intervener plaintiff rests as well, your Honor.

Mr. McCarthy: We have been discussing whether to proceed, your Honor.

I would like to produce briefly Judge Saden as a witness. I think his comments will be relevant to some of the testimony we have heard this morning.

[129] **George A. Saden,**

called as a witness, being first duly sworn, was examined, and testified as follows:

The Clerk: Will you state your name.

The Witness: George A. Saden, S-a-d-e-n.

The Clerk: Where are you from, sir?

The Witness: Bridgeport, Connecticut.

Direct Examination by Mr. McCarthy:

Q. Judge Saden, functioning as a member of the Reapportionment Board your deposition includes certain testimony with respect to your guidelines in the composition of the Board Plan. And I do not propose to rehearse that. I would simply draw your attention to Judge Parskey's testimony in proceedings this morning with respect to a 1 per cent Senate deviation and a 4 per cent House deviation.

Will you give us your views on those expressions, please?

Mr. Satter: I object to the form of the question.

Mr. McCarthy: All right. I'll rephrase it.

Q. Did you hear Judge Parskey's testimony this morning with respect to a 1 per cent Senate and a 4 per cent House deviation? A. Yes.

Q. Would you care to express your views?

[130] Mr. Satter: I object to the form of the question.

Judge Smith: Sustained.

Mr. McCarthy: I'll rephrase it.

Q. What were your views, your guidelines in the composition of the Board Plan with respect to potential deviations in the Senate and House Plans? A. My views and my instructions to Mr. Collins was to keep the deviations as low as possible in both houses. I fixed no particular figures for either house. Contrary to testimony this morning, there was no understanding by the Board that we would have any 1 per cent deviation factor in the Senate or a 4 per cent deviation in the House.

The deviation factors didn't come into the picture until after I had submitted, in the first instance, a Senate Plan

which had been worked out into deviations. And that plan came out to a deviation factor of less than 1 per cent maximum and minimum.

But there was no preconceived or prejudged deviation factor decided upon by myself or by the Board.

Mr. McCarthy: One moment, if your Honors please.

May I ask the Court whether you would like to hear anything from Judge Saden with respect to the issue of drop population in Enfield, Fairfield and Bristol, or with respect to the alleged non-contiguity [131] of Assembly District 104 in Ansonia?

If I understood the thrust of your Honors' comments this morning, you would choose not to hear any more testimony in those particulars?

Judge Blumenfeld: On the drop population I guess that is so. That is before the state court, you say, for correction in a proceeding there.

Mr. McCarthy: It is indeed, your Honor.

Judge Blumenfeld: Yes. So I don't think we are interested in that.

Mr. McCarthy: And the same with respect to the alleged non-contiguity of Assembly District 104.

Judge Blumenfeld: No.

Mr. McCarthy: All right.

I have no further questions.

Mr. Satter: No questions.

Mr. Beizer: No questions.

By Judge Blumenfeld:

Q. Judge, I am reading part of your deposition here and I am not sure that your testimony is clarified, but it seems what you said—have you looked at this lately? A. No, I haven't seen it since I was deposed.

Judge Blumenfeld: I think perhaps you ought to have a copy of it.

[132] Has somebody got the excerpt of the deposition of Judge Saden?

Mr. McCarthy: I have the full deposition.

Q. (By Judge Blumenfeld) On Pages 24 and 25 there is some testimony of yours at this deposition. A. Yes.

Q. Do you recall this? A. Yes.

Well, I would have gone on to give substantially, I think, the same answer as is contained here about the criterion that I was using in trying to devise plans for these two houses.

Q. Do I understand that you recognized the constitutional command to apportion districts so that to apply as nearly as possible the rule that one man has one vote? A. Yes.

Q. But at the same time you were working out a plan that would reflect what you called a corollary to that, so that the corollary being that the final composition of the legislature and the house would correspond in political affiliation to that of the voters as a whole throughout the state? A. Well, if I may elucidate just a bit.

Q. Yes. A. I recognized the controlling factors, the one man-one [133] vote of the Reynolds v. Sims case.

A secondary factor was the attempt in the House to minimize, within reasonable limitations, the number of town cuts or segmentations, as you may say.

And third I thought that as a corollary of the one man-one vote principle a plan that would be fair would be one that would react as closely as possible in the composition of the respective House or Senate to the actual plurality of vote on the House or Senate lines in a given election.

Q. You mean state-wide? A. State-wide. And for that reason when these plans were formulated I did look back at the election results in '66, '68 and '70 to see how these plans would work out. And as we worked them out based on the election results, where you had a split town you couldn't get accurate votes because the voting districts didn't fall that way. So you had to take an arb trary estimate.

Q. You had to get hold of somebody who knew what the situation was in the town? A. Well, I didn't want to do

that because you depend upon subjective elements. So in all cases of split towns I took a proportional arbitration factor depending upon the number of people going into a district, taking a percentage of the overall plurality or the overall vote for one side or the other and figuring that as an element in determining whether [134] that town went Republican or went Democratic.

Q. In applying this corollary to the doctrine of fairness, is that what caused some of these districts to come out in what have been described as unusual shapes or shapes that deviate from normal? A. In some instances that may have occurred. I do think that you—and I think in the deposition I point out the extreme factor where it is conceivable that you could have, in an extreme example, every district in the state won by one vote. So that one party would have all the representation in both houses. Whereas, a very substantial minority would be completely unrepresented because they had lost by the two vote margin.

Q. I don't want to oversimplify this, but in effect what you were doing was establishing the principle of proportional representation on a statewide basis? A. Within very broad limitations.

Q. But that was one of the factors— A. One of the factors.

Q. —which entered into this final Plan? A. Yes, it was.

And the fact is, your Honor, that when you test these plans against the '66 and '68 results you will find that the Democrats would have won in both years as they should have because they won the plurality of the votes in both houses in [135] both years.

Q. Then that is sort of a tribute to the fidelity with which you applied your own theory in arriving at these district lines? A. If you may say so.

Judge Blumenfeld: All right.

Judge Smith: Thank you.

Judge Zampano: Thank you.

(Witness excused.)

Mr. McCarthy: The only further evidence I have, your Honor, is to offer a certified copy of the state court proceedings in pursuit of the first defense of intervenor's answer.

Your Honor, while Mr. Cannon is reviewing the state court record may I recall Judge Saden for one more question, if you please, which I think may amplify the record?

Judge Blumenfeld: Okay.

[136] **George Saden,**

recalled as a witness, having been previously duly sworn, was further examined, and testified as follows:

By Mr. McCarthy:

Q. Judge Saden, with respect to the deviations of the Board Plan which was adopted, have you seen any complete plans before that with lesser deviations? A. No, I had not.

Mr. McCarthy: Thank you.

That's all, your Honors.

(Witness excused.)

Mr. Cannon: No objection.

Judge Blumenfeld: Does the state have any evidence?

Mr. Cannon: No, your Honor.

Mr. McCarthy: If your Honors' please, I have perhaps one relevant supplement to the state court record, which is not certified because it entails subsequent developments.

I had the certification made up as late as possible, but we have some more developments.

Judge Blumenfeld: What is it about?

Mr. McCarthy: Well, let me state what it is.

Judge Smith: This one may be marked Defendants' Exhibit B.

[137] (Defendants' Exhibit B: State court record, marked full exhibit.)

Mr. McCarthy: This exhibit simply purports to show some subsequent developments to the state court file certification.

The most relevant of which is to notice pleadings by interveners in Wethersfield, additional appearances by the Attorney General for the Comptroller and Treasurer and a pleading and motion for more specific statement on behalf of parties in the Town of Killingly.

Judge Blumenfeld: I take it there is no objection to this, Mr. Satter?

Mr. Satter: No objection.

Mr. Cannon: I object to the correspondence that he's got attached to it.

Mr. McCarthy: All right. Strip off the correspondence.

Judge Smith: Defendants' Exhibit C, minus the correspondence.

(Defendants' Exhibit C: Additional pleadings, marked full exhibit.)

Mr. McCarthy: The intervening defendant rests, your Honor.

[Arguments of Counsel, pages 138-196, omitted.]

District Court Opinion and Judgment, Notation Where Found in Jurisdiction Statement

[The Memorandum of Decision of the District Court in *Cummings et al., and Aronie et al.* v. *Meskill et al. and Gaffney*, reported at 341 F. Supp. 139 (D. Conn. 1972), is printed in the Appendix to appellant's Jurisdictional Statement in *Gaffney* v. *Cummings*, 71-1476, at pages 1a to 12a. The Judgment of the District Court in the same cause is printed in the Jurisdictional Statement at pages 13a-14a.]

Notice of Appeal to the Supreme Court of the United States. Notation Where Found in Jurisdictional Statement

[The Notice of Appeal to the Supreme Court of the United States is set forth in the Jurisdictional Statement at pages 15a-16a.]

SUPREME COURT OF THE UNITED STATES

Appellant's Motion for Expedited Consideration Denied by the Supreme Court of the United States

[Caption Omitted]

[May 22, 1972]

Motion of appellant to expedite consideration denied. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST join in denying expedited consideration on the merits but would invite appellant to file an appropriate motion for a stay.

[Reported at 406 U.S. 942.]

Appellant's Application for a Stay Granted by the Supreme Court of the United States

[Caption Omitted]

[June 12, 1972]

Application for stay presented to MR. JUSTICE MARSHALL, and by him referred to the Court, granted. MR. JUSTICE STEWART would deny the application.

MR. JUSTICE DOUGLAS, dissenting.

[Dissenting opinion omitted.]

[Reported at 407 U.S. 902.]

Order of the Supreme Court of the United States Noting Probable Jurisdiction

[Caption Omitted]

[October 10, 1972]

In this case probable jurisdiction is noted.

MOTION

INDEX

	Page
MOTION FOR EXPEDITED CONSIDERATION	1
JURISDICTIONAL STATEMENT AND BRIEF	5
OPINION BELOW	6
JURISDICTION	6
STATE LAW INVOLVED	6
QUESTIONS PRESENTED	7
STATEMENT	8
SUMMARY OF ARGUMENT	11
ARGUMENT: SUBSTANTIALITY OF THE QUESTIONS	16
I. The Purpose of the Litigation Spawned by Baker v. Carr Is To Broaden Access to the Political System by Invalidating Vote Debasement Caused by District Population Disparity or Other Factors; Absolute Proportional Representation Has Not Been Mandated, But Districts Drawn To Deny To Identifiable Voters or Groups of Voters Fair Opportunity To Secure Representation Commensurate With Their Numbers Are Prohibited	16
A. Courts can and have eliminated the vote debasement associated with gross population malapportionment, and also both the resultant regional (urban-rural) unfairness in representation and the resultant political party unfairness in representation (insofar as political allegiance tended to cluster in regional patterns)	19

Page

B. Absolute population equality is not needed to end the dilution of the effective value of a vote associated with historic population malapportionment, it submerges other representation values, and it creates instability and uncertainty in districting patterns; hence the original "substantial equality" rule of *Reynolds* v. *Sims* (which was approved for local apportionment by this Court in *Abate* v. *Mundt*) is the preferable rule for state legislative reapportionment 22

C. The close correlation between gross population malapportionment and debasement of equal opportunity for effective vote values does not have a counterpart in any close correlation between a tight population equality rule and achievement of fair representation, as the experience in several states demonstrates; indeed, in some circumstances a precise equality rule, by increasing the districting options open to the reapportioner, can promote covert gerrymandering, so that "minority government" has occurred even under "one man-one vote" redistricting 27

D. Once population malapportionment has been eliminated an apportionment plan which is the product of authorized state processes of reapportionment is entitled to the customary presumption of constitutionality; to prevail, the challengers must show that the plan was conceived or operated as a purposeful device to minimize or cancel out the voting strength of identifiable (racial or political) elements of the voting population 30

1. Relevance of Whitcomb to the Connecticut Appeal 31

II. The Connecticut Apportionment Board's Plan Complies With the Substantial Population Equality Rule of *Reynolds* v. *Sims* Applicable to State Legislative Apportionment 34

Page

A. Phrasing the constitutionally required degree of population equality 34

B. Inherent limitations on population equality imposed by manner of reporting census data 37

III. The Connecticut Apportionment Board's Plan Is in No Sense a Political Gerrymander, or Imbued With Impermissible Political Purposes, Even If Allegations of Political Gerrymandering Are Justiciable; in Any Event Plaintiffs Have Offered No Proof of Invidious Discrimination ... 40

A. Clarifying the District Court's position 40

B. The justiciability issue 41

C. The benevolent gerrymandering argument .. 42

D. The safe district argument 48

E. The attack on the Apportionment Board for not incorporating third parties and independent voters 49

F. The "Peculiar Shapes" argument 50

G. Consideration of incumbency, *i.e.*, pre-existing districting patterns, in reapportionment 52

H. Correction of clerical errors in Board's plan 54

I. The present posture of the absention argument 55

IV. The Bipartisan Commission With Tie Breaker Device for Apportionment, Found in Connecticut and Several Other States, Is a Post-*Reynolds* v. *Sims* Innovation Which Not Only Comports With the Substantial Equality Rule of *Reynolds* (or Any Degree of Population Equality Which May Be Constitutionally Mandated) But Also Institutionalizes a Process for Expeditious and Fair Discharge of the Apportionment Function 57

PAGE

Connecticut State Register and Manual 1971 19

Dixon, "The Warren Court Crusade for the Holy Grail of 'One Man-One Vote'," *The Supreme Court Review*, U. Chic. L.R. (1969) 29

Edwards, "The Gerrymander and 'One Man, One Vote'," 46 NYU Law Rev. 779 (Nov., 1971) 18, 34

Hacker, *Congressional Districting* (1964) 19

Journal of the Connecticut House of Representatives, 1971 Session, June 3, 1971 37

McKay, "The Reapportionment Decisions, Retrospect and Prospect", 51 Am. Bar J. 128 (1965) 11, 19

Statement of Vote, 1970 19

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1476

J. BRIAN GAFFNEY,

Appellant,

v.

THEODORE R. CUMMINGS, et al., NANCY ARONIE, et al., and THOMAS J. MESKILL, Governor of the State of Connecticut, et al.,

Appellees.

MOTION OF APPELLEES THEODORE R. CUMMINGS, ET AL, TO AFFIRM

Appellees Theodore R. Cummings, et al (hereinafter referred to as "Plaintiffs") move pursuant to Rule 16 of the Rules of the Supreme Court of the United States that the judgment of the District Court be affirmed on the ground that the questions presented on appeal are not so substantial as to warrant further argument.

Statement

This is a direct appeal from a judgment dated April 4, 1972 of the United States District Court, District of Connecticut, sitting as a three-judge Court. The judgment declares unconstitutional a Reapportionment Plan (hereinafter referred to as the "Plan" or "Board Plan") districting

the Connecticut State Legislature consisting of its Senate and its House of Representatives, submitted on September 30, 1971 by a Reapportionment Board (hereinafter referred to as the "Board"). The judgment further enjoins the Governor, Thomas J. Meskill, and other officers of the State of Connecticut from implementing said Plan. The District Court retained jurisdiction and appointed Robert H. Bork, Esq., a professor of constitutional law at Yale University, as Special Master to formulate and submit a plan of reapportionment conforming with the Court's opinion.

The Board Plan is characterized by a population deviation among the districts in the House ranging from a high of 3.93 % above the ideal to a low of 3.90% below the ideal or a total deviation of 7.83%. It was the admitted product of political structuring by the Board to assure that each political party elected the number of its candidates to each house of the Legislature in proportion to the total vote all of its party candidates received in all the district elections.

Special Master Bork filed his proposed reapportionment plan and his report with the District Court on May 26, 1972 (a copy of his report is annexed to the Plaintiffs' Memorandum in Opposition to Appellant's Motion for Stay submitted to this Court). On June 9, 1972, the District Court heard all interested parties on the Special Master's Plan and it is anticipated the Court will approve said plan and order its prompt and expeditious implementation.

Summary of Argument

The District Court faithfully followed the leading cases of this Court on legislative reapportionment and its decision is justified by both the evidence and the law.

The District Court applied the standard that "deviations from absolute numerical equality which are more than minimal may not be allowed unless they are . . . the unavoidable results of attempts to obtain precise equality" (Mem. of Dec. App. p. 9a). Essentially this is the same as the standard enunciated by this Court, that districts shall be "as nearly of equal population as is practicable." *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Swann* v. *Adams*, 385 U.S. 440 (1967); *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969).

The District Court found that the House districts in the Board Plan deviated from the perfect average by a maximum of plus 3.93%, and by a minimum of minus 3.90%, for a total deviation of 7.83%. It concluded that these deviations did not meet the constitutional standard. The evidence in this case justified this finding. A reapportionment plan, submitted to the Court, for the House with the same number of seats as the Board Plan and based upon the same census material as available to the Board, demonstrated that the deviations could be reduced to plus 1.6% above the ideal and minus 1.01% below the ideal for a total deviation of 2.61% (Pl. Ex. 23, Transc. pp. 77-78, 85-87).

Of the three explanations offered by the architects of the Plan, political structuring was clearly the dominant cause for the excessive deviations: (1) The census data explanation was not convincing because Plaintiffs' Exhibit 23 conclusively showed that, based upon this same census information, the House deviations could be reduced from 7.83% in the Board Plan to 2.61%; (2) The desire to minimize

town line cuts was not convincing because the expressed operating principle of the Board was that once it had to cut some town lines, it was not restrained in how many it did cut; (3) The Board's obsession with politically structuring the districts to assure that each political party elected the number of its candidates to each house of the Legislature in proportion to each party's total of the votes all its candidates received in all individual district elections, dominated the Board's decision making. It was applied in the creation of each and every legislative district. The chief author of the Plan asserted that political structuring effectuated the true meaning of the one man-one vote doctrine.

The District Court therefore found that political structuring was "a substantial cause of the numerical deviations of the Board Plan" (Memo. of Dec. App. p. 11a) and that "if partisan political balancing were eliminated a closer approach to perfect equality could be achieved with the materials at hand" (Id., App. p. 7a).

The District Court then held that political structuring was not a legitimate state interest or rational policy that could justify the deviations. The lower Court was totally warranted in this holding.

Political structuring is nothing less than political gerrymandering, which is defined by Justice Fortas as "deliberate and arbitrary distortion of district boundaries and population for partisan or personal political purposes" (*Kirkpatrick* at p. 538).

When in *Kirkpatrick* this Court was squarely asked to justify deviations on the basis of "political practicality", it resoundingly responded that "problems created by partisan politics cannot justify apportionment which does not otherwise pass constitutional muster" (*Kirkpatrick* at p. 533).

Further reasons, based upon the evidence of this case, for holding that political structuring is not a rational policy are:

(1) Political structuring caused an increase in the number of town lines cut in violation of the Connecticut State Constitution and obviously, a rational state policy cannot be one which breaches the State's own constitution.

(2) It caused the bizarre and peculiar shapes of the districts.

(3) By purposefully creating safe districts, political structuring invidiously discriminated against those individual voters who were deliberately placed in the sure district of the opposing political party, and as a result of that design, denied "the individual and personal" (*Reynolds* at p. 561) right to an effective vote and to effective political action within that district.

(4) By endeavoring to control the outcome of legislative elections, political structuring destroyed the very essence of voting by depriving a voter of the power of determination.

The justification urged by the appellant that political structuring will prevent "minority government" is both without merit and not demonstrated by the facts.

The Plan is not the product of a deliberative bi-partisan apportionment board acting non-politically. The evidence reveals that the Board functioned as a one-man operation of Judge Saden assisted by his counsel, Mr. Collins. There were no meetings whatsoever by the Board on the House Plan and it never met as a Board to approve the entire Plan. The tie-breaking member was handed the product of Judge Saden on the last day of the constitutional deadline and he had no choice but to accept it. The Board, under the facts of this case, is not entitled to a presumption of fairness and the criteria for determining the constitutionality of its handiwork must be the same as applied in *Reynolds, Swann and Kirkpatrick.*

If this Court reinterprets its prior decisions so as not to require that districts be as nearly equal as practicable, then this Court should apply the Supremacy Clause to allow deviations higher than in the Board Plan in order to give the maximum feasible effect to the valid state policy, expressed in the Connecticut State Constitution, of preserving town lines. Such an interpretation by this Court is particularly justifiable in Connecticut where towns perform important state functions and where, as a result of the prevalence of town meetings, the citizens of each town are organized into active and functioning political units. Permitting a larger number of legislative districts to coincide with town lines will contribute to more effective representation.

ARGUMENT

I.

The Board plan of apportionment fails to meet the constitutional mandate that legislative districts must be "as nearly of equal population as is practicable".

Throughout his brief appellant urges upon this Court that some concept other than equality of population ought to be the standard by which a legislative plan of apportionment should be judged. He calls for "equality of political opportunity" (Appellant's Brief, p. 18) in one instance and in another for "substantial equality of district population yielding some room for adjustment to other representation customs and values" (*Id.* at p. 29). This argument is characteristic of one who thinks in terms of the voting interests of institutions, whether they be political, governmental, economic, partisan or social, rather than in terms of the voting rights of individuals. This approach is perhaps natural for appellant who, in his capacity as State Chairman of one of the major political parties in the State

of Connecticut, might tend to think of people as blocks of votes rather than in their roles as individual citizens of that State. However, simply stated, the standard established by the Equal Protection Clause of the Constitution and by this Court for legislative apportionment is that the districts must be "as nearly equal as is practicable".

That is the standard which was applied by the District Court in holding that the plan of apportionment created by the Connecticut Apportionment Board failed to meet constitutional limitations on deviations from numerical equality. The District Court said:

> "The constitutional principle of the vote cases appears to be that deviations from absolute numerical equality which are more than minimal may not be allowed unless they are . . . the unavoidable results of some attempts to obtain precise equality . . ." (Mem. of Dec., App. p. 9a).

Ever since *Baker* v. *Carr*, 369 U.S. 186 (1962), opened the way to judicial scrutiny of the structuring of our legislative bodies, population, as measured by individual citizens, has been the touchstone against which all apportionment plans have been tested. As Chief Justice Warren said in *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964):

> "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or economic interests. As long as ours is a representative form of government and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."

Since formulating the basic concept of one man-one vote in *Gray* v. *Sanders*, 372 U.S. 368 (1963), this Court has without variation held that equality of population must be

the cornerstone of any plan of apportionment. In *Wesberry* v. *Sanders*, 376 U.S. 1, 7 (1964), the Court held that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's". This same standard was applied to state legislative plans of apportionment in *Reynolds* v. *Sims*, *supra*. Interestingly enough, while *Reynolds* is frequently cited for the proposition that one man-one vote really translates into "substantial equality", the precise holding of the case was as follows:

> "By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, *as nearly of equal population as is practicable.*" (Emphasis added.) *Id.* at p. 577.

As the proliferation of reapportionment cases has developed a more sophisticated body of law, it has become more and more apparent that the primary concern of the courts, both state and federal at every level, has been to preserve the integrity of an individual's vote against attacks from various interest groups. Thus in *Swann* v. *Adams*, 385 U.S. 440 (1967), the Court held that the burden was upon the proponent of a plan to "articulate acceptable reasons for variations among the populations of the various districts" especially when the opponents of such a plan had placed before the court their own plan which revealed smaller population deviances. 385 U.S. at 445. Then in *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), the Court invalidated a Missouri congressional redistricting plan which had a deviation that ran from a high of 3.13% to a low of 2.84% on the ground that the State of Missouri had not satisfactorily justified the population variations among the districts.

What is clear from the mainstream of holdings by this Court is that there is *no de minimis* approach to reapportionment. In *Kirkpatrick* the state had urged the Court to uphold the plan on the theory that the variations were *de minimis*. This Court rejected that suggestion and held that the State "must justify each variance, no matter how small", saying:

> "There are other reasons for rejecting the *de minimis* approach. We can see no non-arbitrary way to pick a cutoff point at which population variances suddenly become *de minimis*. Moreover to consider a certain range of variances *de minimis* would encourage legislators to strive for that range rather than for equality as nearly as practicable." 394 U.S. at 531.

Or as the Court said in *Reynolds*, at 578:

> "What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of that case."

In other words, there is no arbitrary percentage of deviation from numerical equality which is, in and of itself, acceptable.

As a corollary to this rule, since there is no arbitrarily acceptable percentage of deviation, then there is no arbitrary point at which the burden of proof shifts to the challenger of a plan of apportionment to prove that the deviation is impermissible. As was noted above, the burden in every case is on the state to "justify each variance, no matter how small". *Kirkpatrick* v. *Preisler, supra,* 394 U.S. at 531; *Wells* v. *Rockefeller,* 394 U.S. 542, 544 (1969); *Swann* v. *Adams, supra,* 385 U.S. at 443-444.

Appellant, rather cavalierly, asserts that in this case the burden should shift to the plaintiffs to prove the unfairness of the deviation from numerical equality. For this

claim, he relies essentially on *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971) (Appellant's Brief, pp. 30-33). However, this reliance is clearly inappropriate as applied to the facts of this case.

In the first place, *Whitcomb* dealt with multimember legislative districts which are themselves *sui generis* and have been treated by this Court as such. See *Lucas* v. *Colorado General Assembly*, 377 U.S. 713, 731 (1964); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965); *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966). The Court has clearly held that where multimember districts exist, in order to invalidate the plan creating them, it must be shown that they unconstitutionally operated or were designed to "minimize or cancel out the voting strength of racial or political elements of the voting population." 379 U.S. at 439. So by their very nature the proof in cases dealing with multimember districts involves proof of subjective discrimination rather than the objective numerical deficiencies that are evident in single member districts.

Secondly, the plaintiff in *Whitcomb alleged* invidious racial discrimination against the Negro voters in Marion County, Indiana. Having made such an allegation the plaintiff in that case assumed for himself the burden of proving the invidious discrimination that he alleged. This he could not do. In the instant case, the evidence revealed invidious discrimination against Connecticut citizens as individuals resulting from the Board's political structuring technique (See Point II of this Brief, *infra* pp. 18-22), but the District Court in its Memorandum of Decision did not find it necessary to decide the case on the question of political gerrymandering, and in this brief, the plaintiffs do not assert it as an independent ground for affirmance.

Finally, in *Whitcomb* the Court found, and indeed the plaintiff in that case conceded, that the plan of apportionment under attack was not "*designed* to dilute the vote of

minorities", 403 U.S. 149. In the present case, however, the architects of the plan themselves admit, inded boast, that a fundamental purpose running throughout the entire plan was to achieve a preconceived and preprogrammed political result. It was the single most determinative factor in ferretting out the partisan votes that would fulfill the predetermined political result.

The ultimate proof of the validity of this Court's consistent position that equality of population must be the basis for apportionment *is that it works.* After all the thrashing, resistance and acrimony are set aside, and the responsible individuals throughout the several states get down to the business of redistricting themselves in accordance with the mandates of the Constitution and of this Court, it is becoming more and more apparent that the states are able to create legislative districts that are "as nearly of equal population as is practicable". *Reynolds* at 577. This Court noted in *Kirkpatrick,* when referring to the New York apportionment plan considered in the companion case of *Wells* v. *Rockefeller,* 394 U.S. 542 (1969), that the New York regions were divided into districts of almost absolute population equality, which was to this Court "striking evidence that a state legislature which tries can achieve almost complete equality among all the State's districts" (p. 532).

In fact, since *Reynolds,*[1] and particularly since *Kirkpatrick,* the efforts to achieve complete numerical equality throughout this country here been remarkably successful. As of May 16, 1972, 11 of the 50 states had created senate plans with a deviation lower than the 1.81% of the Board

[1] After the *Reynolds* decision Professor Robert McKay observed that ". . . the lower federal courts, the state courts and even the state legislatures moved with almost surprising alacrity toward good faith compliance." McKay, "The Reapportionment Decisions, Retrospect and Prospect", 51 Am. Bar J. 128, 131 (1965).

Plan and 19 of the 50 states had drawn house plans with deviations lower than the 7.83% of the Board Plan.[2]

The District Court found that the House districts in the Board Plan deviated from the perfect average by a maximum of plus 3.93% and by a minimum of minus 3.90%, for a total deviation of 7.83%. It concluded that these deviations did not meet the constitutional standard. The evidence in this case justified this finding. A reapportionment plan, submitted to the Court, for the House with the same number of seats as the Board Plan and based upon the same census material as available to the Board, demonstrated that the deviations could be reduced to plus 1.6% above the ideal and minus 1.01% below the ideal for a total deviation of 2.61% (Pl. Ex. 23, Transc. pp. 77-78, 85-87).[3]

On May 26, 1972, the Special Master, appointed by the District Court to prepare a substitute plan of apportionment for the plan struck down, filed a plan with the court which

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[2] Book of the States, 1972 Edition, See tabulation of State apportionment plans, annexed to Plaintiffs Memorandum in Opposition to Stay, submitted to this Court.

[3] On the issue of the Board's Senate Plan no evidence of lower deviations was adduced, but the Court was correct in declaring the entire Plan unconstitutional when the deviations in one house did not meet the requisite standard. It was following the rule of this Court that "a court in reviewing an apportionment plan must consider the scheme as a whole." *Burns* v. *Richardson*, 389 U.S. 73, 83 (1966). The District Court was then also able to follow the direction of this Court of imposing upon the Special Master the responsibility of developing a plan of apportionment "on an overall basis." (*Id.* p. 83.) In accord is *Maryland Committee* v. *Tawes*, 377 U.S. 656 (1964).

The District Court was particularly warranted in so acting in light of its finding that the boundary lines of house districts did not mesh with the boundary lines of senatorial districts. (Memo. of Dec., App. p. 5a.)

The Special Master's plan corrects this situation and achieves significant administrative convenience by pyramiding four house districts within each of the 36 senatorial districts.

achieves virtual mathematical equality. No senate district in the Master's plan deviates from numerical equality by more than 1%. No house district displays a deviation of as much as 1.2% from perfect equality, the largest being 1.16%.[4]

So it can be done. As the Special Master said in his report, "an honest and good faith effort has been made to construct districts, in both houses of the legislature, as nearly of equal population as is practicable." He has achieved the mandate of this Court and, by casting aside the partisan political concerns that permeated the Board Plan, has fulfilled the task which the plan under consideration failed to do, that is, of insuring that in Connecticut no man's vote in any one district will be accorded more weight than that of one in any other district.

II.

The Board's political structuring of the legislative districts substantially caused the population deviations and is not a rational state policy that can justify such deviations.

The District Court found that the "partisan political structuring" employed by the Board was, "a substantial cause of the numerical deviations of the Board Plan" (Mem. of Dec., App. p. 11a), and that, "If partisan political balancing were eliminated as a factor, a closer approach to perfect equality could be achieved with the materials at hand" (id., App. p. 7a).

The Court held that, "political gerrymandering cannot be approved as a legitimate reason for violating the requirement of numerical equality of population in districting . . . No legislative or constitutional enactment provides any

[4] Report of Special Master, May 26, 1972.

basis for it or authorizes it. No compelling state necessity for it is demonstrated. The Supreme Court plainly would not approve the partisan political structuring . . ." (id., App. p. 11a).

The Court then concluded that, "the deviations from equality of population of the Senate and the House districts are not justified by any sufficient state interest and that the Plan denies equal protection of the law to voters in the districts of greater population in violation of the Fourteenth Amendment to the Constitution of the United States" (id., App. p. 8a).

The findings of the Court and its holdings are justified by the evidence in this case and by the law.

A. The evidence establishes that political structuring caused the population deviation.

The Board's Plan for the districting of the House had a total deviation of 7.83%.

The principal architects of the Plan, Judge Saden and Mr. Collins, offered three explanations for this deviation: (1) the nature of the census data available; (2) the political structuring utilized by the Board to assure that each political party elected the number of its candidates to each house of the Legislature in proportion to each party's total of the votes all of its candidates received in all the individual district elections; and (3) minimization of cutting of town lines.

The total evidence in this case clearly establishes that the most significant factor, which supervened all others, and which caused the deviation among the districts, was the application of the political structuring principle.

Clearly the census data did not cause the gross deviation in the Board Plan of 7.83%. Plaintiffs submitted a

plan for House districts based upon the census data available to the Board in which the deviation did not exceed a high of 1.6% above the ideal and a low of 1.01% below the ideal or a total deviation from the largest to the smallest of 2.61% (Pl. Ex. 23, Transc. pp. 77-78, 85-87). That the District Court gave credence to the plaintiffs' 1% plan as a valid demonstration of what it purported to achieve is indicated by the Court specifically referring in its opinion to Plaintiffs' Exhibit 23 (Mem. Dec., App. p. 7a). The appellant also conceded its validity by introducing no evidence to contradict it.

The Special Master's Plan, filed on May 19, 1972, keeps deviations in the House below 1% and further validates the fact that census data was not the cause of the higher deviations of the Board Plan.[5]

Likewise the minimization of town line cuts was not a significant factor in the creation of the Plan. Judge Parskey, one of the members of the Reapportionment Board, testified that the operating principle of the Board was: "That once town lines were cut, from then on it didn't make any difference."[6]

Judge Parskey further testified that he raised very serious objections to the manner in which the various towns were cut.

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[5] The Special Master may have used slightly more refined census data than available to the Board. It only accounts for his ability to get the deviations below those in Plaintiffs' Exhibit 23.

[6] His exact testimony was:

> "Q. Was there a fundamental working principle, even if it hadn't been discussed, on the basis of how you dealt with the cutting of town lines in order to comply with the Federal constitutional requirements? A. Well, yes. The impression I had was that the operating principle was that once the town lines were cut, from then on it didn't make any difference" (Transc. p. 10).

> "Well there didn't seem to be any particular need for promiscuous cutting. It made no sense from a population point of view to have these cuts made. So that if the only criterion was to keep within the 1% or the 4%, it wasn't necessary to do that for the purposes of these cuts" (Transc. p. 15).

Mr. Vocelli, who was a member of the staff of the Reapportionment Board, also testified that he had "the impression that once it became clear and obvious there would have to be some violation of the State prohibition against town cuts, I got the impression that after that concern about the integrity of the town lines diminished to virtually nothing" (Transc. p. 94).

Turning to the political structuring explanation, Mr. Collins testified that when there was a choice in the development of assembly districts between preserving town lines and achieving what he called political balance, he always chose the second objective (Pl. Ex. 27, Collins Dep. pp. 30-31).

Both Judge Saden and Mr. Collins testified that the political structuring principle was pervasively utilized in the development of the Plan. Judge Saden said it was applied in the creation of each and every senatorial and house district throughout the entire state.[7]

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[7] Judge Saden testified:

> "Q. And did you in fact plug in the election results for all three years, '66, '68 and '70 *into each and every newly created senate district and house district?* (emphasis added) A. I did as far as you could . . ." (Pl. Ex. 26, Saden Dep. pp. 29, 80)

Mr. Collins testified in his deposition that political considerations were applied in the formation of assembly districts throughout the entire state.[8]

Judge Saden, in fact, went even further and asserted that his dominant concern was to comply with the one man, one vote doctrine in the development of the Plan and this necessarily *required* his utilization of political structuring because it carried into effect the true meaning of that doctrine.[9]

When the District Court was presented with the overwhelming evidence that the authors of the Board Plan gave only three explanations for the deviations; that of these, the census data explanation was not valid because the census data permitted a maximum deviation of 2.61% as opposed to the Board's deviation of 7.83%; that the minimization of town lines explanation was not valid because the testimony revealed that the operating principle of the Board was that once the town lines had to be cut, it did not make any difference how many were cut; and that the third explanation of party political structuring was pervasively

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[8] Mr. Collins testified:

"Q. So that political consideration then did go into the formation of Assembly Districts 18, 19, and 20? A. Absolutely. Absolutely. *Throughout the state this was true.*" (Pl. Ex. 27, Collins Dep. p. 39) (emphasis added)

[9] Judge Saden testified:

". . . if you concede as you must the one man, one vote principle is one to create an equal protection of the law is a just result for every man's vote it seems to me that a corollary to that as I explained to you before is the propos[i]tion that if you don't get some kind—if you don't make any effort to get some kind of equal representation in the General Assembly in both Houses based upon the kind of total vote you are getting for those Houses you are thereby to that extent depriving the efficacy of that one man, one vote principle because you're denying minority groups as full a voice as they would otherwise be entitled to." (Pl. Ex. 26, Saden Dep. p. 96)

applied and was the dominating factor in the development of the Plan; the lower Court was completely warranted in finding that partisan political structuring was a substantial cause of the deviations of the Board Plan.

B. Political structuring is political gerrymandering, which while this Court has not always invalidated, it has never encouraged.

In order to cover up and even sweeten the true nature of the Board's practice and objectives, appellant used a number of fancy names. From time to time they called the engineering of legislative districts an application of "the political balance principle," or consideration of "political fairness," or assuring "equality of political opportunity." Appellant sought to avoid the pejorative connotation of political gerrymandering by claiming none of this engineering was done to achieve a political advantage. But the names used cannot hide the fundamental fact that the maneuvering of legislative district lines for political purposes is political gerrymandering. That is the definition widely accepted.

Justice Fortas in *Kirkpatrick* (p. 538) defines gerrymandering as the "deliberate and arbitrary distortion of district boundaries and population for partisan or personal political purposes." [10]

Normally gerrymandering is confined to the redesign of a limited number of districts for political purposes. However, the political structuring applied in the Plan was of a more sophisticated variety and was more pernicious because it sought to accomplish a desired political purpose throughout the entire state.

Each political party obviously has major areas of political strength throughout the State where its candidates win

[10] See also Edwards, "The Gerrymander and 'One Man, One Vote'" 46 NYU Law. Rev. 779, (Nov. 1971)

by a substantial plurality. Under the political structuring principle applied by the Board, these large pluralities were considered wasted unless the excess could be distributed in other areas of the State where a party was not strong to assure victory of its candidates in these other areas.

The Board principle operated like referred pain. The ailment is in one part of the body and it hurts in the other.

In Connecticut, the major area of the Republican vote is in Fairfield County and there its candidates win by very large pluralities.[11] In other states, Democrats may win large pluralities in one or two of the major cities. By approving the Board's principle of political structuring, this Court would be establishing a national rule which allows the mutilation of legislative districts in one section of a state because a party obtained large pluralities from the natural concentration of the party's vote in another section of the state.

Gerrymandering is an evil which this Court has consistently warned against. It is an evil that is also universally condemned by the political scientists.[12]

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[11] Fairfield County comprises about 13 % of Connecticut land area (611 square miles out of 5009) and in 1970 it produced about 30% of the Republicans total statewide vote in the House district races. (Land area statistics derived from Connecticut *Register & Manual*, 1971 and election statistics derived from *Statement of Vote*, 1970, published by Secretary of State).

[12] See Edwards, supra at p. 892.

Baker, "Gerrymandering: Privileged Sanctuary or Next Judicial Target?" in Polsky, ed. *Reapportionments in the 1970's*, 121 (1971)

Hacker, *Congressional Districting* (1964)

McKay, "The Reapportionment Decisions, Retrospect & Prospect", 51 Am. Bar J. 128 (1965).

Even when, for a variety of reasons, this Court has refused to grant relief on claims of gerrymandering (*Whitcomb* v. *Chavis*, 403 U.S. 124 (1971); *WMCA, Inc.* v. *Lomenzo*, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965)), it has never condoned it.

Rather this Court has considered the factor of political party strength as irrelevant and improper in the application of the one man-one vote doctrine to the development of legislative districts.

In *Klahr* v. *Williams*, 313 F. Supp. 148 (D. Ariz. 1970), the Arizona State Legislature adopted a reapportionment plan by use of a computer programmed with, among other things, legislator incumbency and party strength in the districts. The District Court, declaring the plan unconstitutional, specifically stated (p. 152):

> "In addition we disapprove as inapposite the consideration of party strength as a factor in reapportionment or redistricting."

This court, in affirming the lower court's opinion in *Ely* v. *Klahr*, 403 U.S. 108 (1971), observed that the computer creating the districts had been programed to give priority to one party districts over districts drawn without regard to party strength and noted with approval the lower court had found "inapposite" the consideration of party strength.[13]

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[13] Appellant attempts to distinguish *Klahr* on the grounds that the plan was devised by a computer rather than by bi-partisan commission. This attempt is futile. Obviously the computer plan was designed by the bi-partisan cooperation of the legislature. Moreover, in the instant case, the Board tried to use a computer to achieve its objective of political structuring. (Pl. Ex. 27, Collins Dep. pp. 55, 56) However, the Board found it could structure the districts better by hand. (See also Special Master's Report.)

The Iowa Supreme Court has squarely held that a bipartisan plan specifically designed to provide safe districts for the members of both political parties was on that grounds alone unconstitutional. *In the Matter of Legislative Districting Noun* v. *Turner*, 193 N.W. 2d 784 (Iowa, 1972), the population deviation among the senatorial districts was 3.2% and among the house districts, 3.8%.[14] The court, however, noted that the plan was specifically designed to provide safe districts for the members of both political parties. The court stated:

> "In fairness we must observe the 'practical political advantage' referred to in creating districts to protect incumbents did not proceed solely to either political party, as there are instances of the creation of districts with predominantly Republican voter majorities as well as the creation of districts with predominantly Democratic voter majorities" (p. 789).

The court specifically held that a deliberate design to create politically safe districts was itself invidious and unconstitutional. It said:

> "However where, as here, a *conscious effort* is obviously present to devise and propose a plan which the legislature would accept because it would to *protect the individual legislators at the polls,* and districts lacking population equality or compactness are created for this political purpose, *invidiousness is established.* . . . We must conclude however that the impermissible consideration which impelled development of [the plan] so that it would be acceptable to the legislators merely because of *political preferment cannot pass constitutional muster*" (p. 790). (Emphasis added.)

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[14] It may be observed that these deviations, at least for the lower house, were less than the instant case.

However, in the words of the District Court, "we need not reach this question" of invalidating the Board Plan purely on the grounds of political gerrymandering. This Court has only to determine that political gerrymandering is not a legitimate state reason for population deviations among legislative districts.

On that point, this Court has already very clearly expressed itself in the *Kirkpatrick* case. In that case the appellants argued that population deviations must be considered in the context of "legislative interplay" (at p. 533). This argument is similar to the appellant's argument that legislative districting is a result of political party interplay. The appellants in the *Kirkpatrick* case also argued that the legislative leaders considered the redistricting plan a "reasonable legislative compromise" and they contended, much like the appellant does here, that "it must be recognized that practical political problems are inherent in the enactment of congressional reapportionment legislation" (at p. 533).

This Court had little difficulty with that argument. It rejected it out of hand, by stating "We agree with the District Court that 'the rule is one of *'practicality' rather than political practicality"* (at p. 533). This Court then went on to answer the question now before us by stating: "Problems created by *partisan politics cannot justify an apportionment* which does not otherwise pass constitutional muster" (at p. 533) (emphasis added).

Were this Court now to approve the political structuring utilized by the Board as a justifiable basis for population deviation in reapportionment cases, it would be a most startling reversal of policy. Not even the most ardent proponents of gerrymandering could expect such a bonanza.

C. Political structuring cannot be a rational state policy when it caused an increase in the number of town boundaries cut and thereby an unnecessary violation of the State Constitution.

The evidence is overwhelming that the political structuring principle applied by the creators of the plan caused the cutting of many Connecticut town lines.

Both Judge Saden and Mr. Collins testified that when there was a choice in the development of assembly districts between preserving town lines and achieving their notion of a political balance, they always chose the second objective.[15] In fact, Judge Saden specifically stated: ". . . It is far more important to have a fair plan than to preserve a town line . . ." (his Dep. p. 48) and "where there are other considerations of fairness . . . I did not insist town lines be maintained exact" (his Dep. p. 56). In both instances, Judge Saden clearly meant by fairness, not equality of the districts, but the achievement of his conception of the political balance.

Mr. Collins testified:

> "Q. But it's fair to say that in the development stage of the House towns were cut to achieve some sort of political result? A. Yes. I'd say there is only the one plan, that's right. The same is true in the Senate in the plans they were trying to achieve a Bbalance for towns skewed Democratic or skewed Republican" (Pl. Ex. 27 Collins Dep. p. 58).

As illustrative of the Board's practice of unnecessarily or excessively dividing towns solely for political reasons plaintiffs adduced evidence of specific example of cutting the towns of Killingly, Watertown, Montville, Hamden and North Haven.

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[15] See Collins Dep. pp. 30-31; Saden Dep. pp. 48, 56.

Plaintiffs' Exhibit 5 (in Saden Dep. Exhibit A), shows the town of Killingly was divided in the formation of assembly districts 50 and 51. Plaintiffs' Exhibit 5-A (Saden Dep. Ex. A-1) shows that a redesign of Assembly Districts 50, 51 and 52 could avoid dividing the town of Killingly. The geographic area encompassed by Assembly Districts 50, 5 1and 52 under the Board Plan is exactly the same as the geographic area encompassed by the Plaintiffs' alternative redesign of these same districts. The population deviation of each of these redesigned districts is within the deviational limits of the plan (Transc. p. 39). The reason for cutting Killingly under the plan was, as admitted by both Mr. Collins and Judge Saden, "too achieve a political balance" (Collins Dep. pp. 26, 27, 31, 32, 33; Saden Dep. pp. 40-45).

The same evidence proved the unnecessary division of the town of Watertown,[16] the unnecessary division of the town of Montville,[17] and the excessive segmenting of the towns of Hamden and North Haven [18] and all for the same reason of political balance.[19]

Since the Connecticut Constitution (Article III, Section 4) forbids the splitting of town lines in the formation of assembly districts and since the evidence established that the political structuring principle applied by the Board caused unnecessary town line cuts, the short, but complete, answer to the issue before us is that political structuring

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[16] See Pl. Ex. 6 and 6A; Transc. pp. 40-42; Collins Dep. pp. 26, 27, 33; Saden Dep. pp. 45-48.

[17] See Pl. Ex. 7 and 7A; Transc. pp. 42-43; Collins Dep. pp. 33, 34; Saden Dep. pp. 48, 51.

[18] See Pl. Ex. 8, 8A, 8B, 8C, 8D; Transc. pp. 43-49; Saden Dep. pp. 52-59 and particularly at p. 59.

[19] Further specific examples were not necessary when the authors of the Plan so readily conceded that political structuring justified the town cuts.

cannot be a rational Connecticut state policy when it caused a violation of the highest expression of Connecticut state policy, namely, its own State Constitution.

D. Partisan political structuring caused the bizarre and peculiar shapes of the districts.

When the excess plurality of a party in one area of the state becomes a justification for maneuvering to elect that party's candidates in another area of the state, inevitably the district lines must wiggle and ferret to probe out pockets of that party's strength. Judge Saden freely admitted this is precisely what happened in the development of the Board plan. He testified at the trial as follows:

> "Q. (By Judge Blumenfeld) In applying this corollary to the doctrine of fairness, is that what caused some of these districts to come out in what have been described as unusual shapes or shapes that deviate from normal? A. In some instances that may have occurred" (Transc. p. 134).

Even legislative districts which were compact, rational, and within town lines were required to be fragmented by the inexorable operation of the principle. Judge Saden himself conceded as much when he said each individual district could not be considered piecemeal no matter how fair it may be by itself but must be considered only in the context of how it fitted into the overall political balance principle.[20]

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[20] Judge Saden testified as follows:

> "Q. In deciding to add a portion of another town or a segment of another town did you in each case look to the election results for those continguous towns to determine which segment you were going to add? A. I gave consideration to that factor as a factor in testing the whole

Political structuring caused the weird, grotesque, almost Rorschach shapes of many of the districts as revealed in Plaintiffs' Exhibit 19. It accounted for the strained contiguity in the 9th Senatorial District of the Towns of Farmington and Newington which are connected by an empty swamp 1000 feet in length (see Plaintiffs' Exhibits 24A-E and 25A-E). The bizarre shapes of some of these districts, like those in the Town of West Hartford (Plaintiffs' Exhibit 9) and the Town of Manchester (Plaintiffs' Exhibit 10 and 10-A) were unnecessary and could have been avoided, as revealed by Plaintiffs' more rational redesign of those districts (Plaintiffs' Exhibits 9-A and 10-B) (See Transc. pp. 51-53, 54-48).[21]

When Judge Saden or Mr. Collins were asked to explain these shapes, they always fell back on the political factor.[22]

The District Court had persuasive evidence to find that the political structuring "method used resulted in creating some districts with highly irregular and bizarre outlines" (Mem. Dec. App. p. 7a).

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area and in trying to reach an overall fair plan. *I mean, you can't just take these things piecemeal* and say, 'Well, forget everything else and *just take this one little district here and is that a good fair district the way it is drawn?*' . . ." (Saden Dep. p. 82) (emphasis added).

[21] Other trial exhibits indicating the tortuous shapes of the Board's districts and a more rational and compact shape of those districts prepared by Plaintiffs without regard for political considerations are Exhibits 11 and 11A, 12 and 12A, 13 and 13A, 14 and 14A, 15 and 15A, 16 and 16A, 17 and 17A. ((See Transc. pp. 60-71)

[22] Mr. Collins testified:

"Q. Well, does not, however, Plaintiff's Exhibit E1 illustrate that census data alone was not the cause for all of the turns and twists that appear in he board plan? A. I never said that it was.

Q. It was the political consideration? A. Absolutely. Absolutely. I don't think anybody is denying this or should. (Collins Dep. p. 38)

Whether or not compactness is an aspect of "practical equality" (*Drum* v. *Seawell*, 260 F. Supp. 922 (N.D. N.C. 1966) and the lack of it is a "taint of arbitrariness" (*Paulson* v. *Meier*, 246 F. Supp. 36 (D. N.D. 1965) which on those grounds would invalidate the Plan, the District Court was clearly right in holding that political structuring which caused peculiarly shaped districts was not a rational state policy.

E. Political structuring deliberately created safe districts.

For the political structuring principle to work and in order to achieve proper relationship between the total party vote and assured election of the requisite number of the candidates of each party, the legislative districts must be made as safe as possible.

The evidence in this case establishes that this was precisely the objective of the Board. As an example, Mr. Collins testified with respect to the West Hartford Assembly Districts as follows:

> "Q. And was this plan developed in order to maximize his chances of reelection in West Hartford? A. I would say that we attempted to, I atempted to set up a plan along the lines I told you, one Republican, one Democratic, and one independent or one swing District in West Hartford" (Collins Dep. p. 39).

Likewise, Assembly District 48 in the Colchester-Montville area was made safe for the Democrats and Assembly District 37 was correspondingly made safe for the Republicans (Collins Dep. p. 34).

Swing senatorial districts were changed into safe districts. Mrs. Osborn testified at the trial that Senatorial District 18 prior to the plan had been a swing district which in the three elections of 1966, 1968, and 1970, the margin of

victory had been a few hundred votes out of a population of over 85,000. However, by the Plan deliberately removing the Democratic town of Griswold and adding a Republican portion of Norwich, the senatorial district became solidly Republican (Transc. pp. 122-125).

The creation of safe districts makes effective political action impossible for the Democratic voters in Republican safe districts and for the Republicans in Democratic safe districts. The District Court properly recognized this consequence when it stated:

> "It is arguably unfair to individual voters and potential candidates for political office to find themselves locked into districts deliberately structured to be 'safe districts' for a party they oppose."

The Court properly emphasized the sacrifice of individual voters to political party objectives. Requiring such a sacrifice of individual voters is invidious discrimination against them and a denial of their individual and personal right to an effective vote and to effective political action within their legislative district. As stated in *Reynolds* at page 561:

> "A predominant consideration in determining whether a state's legislative apportionment scheme constitutes an invidious discrimination . . . is that the rights allegedly impaired are *individual* and *personal* in nature" (emphasis added).

The creation of safe districts insulates the legislature against changes in political demands among its electorate. It means that unless there are landslide elections for one party or the other, the political composition of the legislature is more or less frozen. The legislature, as a consequence,

is unable to perform its basic task of translating public sentiment into public policy.[23]

Moreover, safe districts also insulate the individual legislators during a legislative session from the demands of their constituency because limited numbers of constituents cannot affect their reelection. The districts become the legislators' "fiefdoms" (*Ely* v. *Klahr, supra* at p. 118).

It is no answer, as appellant claims, that safe districts often result from residential patterns. Our point is that the political structuring which *deliberately* creates safe districts is not a rational state policy.

F. Political structuring results in a predetermination of the elections.

By far the most pernicious consequence of the operation of the political structuring principle is the deliberate designing of the legislative districts to predetermine the outcome of the elections throughout the whole State.

The culmination of the application of the principle was Mr. Collins' ability, with easy assurance, to assign each and every one of the 36 senatorial districts under the Plan to either one of the major parties. In identifying each of these senatorial districts as either a safe district for either party or a swing district for either party, he describes only two of the 36 districts as "swing either way" (Collins Dep. pp. 76-77).

Then in a truly remarkable performance, he similarly assigned to each party every single one of the 151 assembly

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[23] Appellant's counsel, when speaking as a political scientist, recognized this precise point. He said: "Ideally there should be a large number of swing districts in order that both parties be responsive to a broad spectrum of interests." (Dixon, "The Warren Court Crusade for the Holy Grail of 'One Man—One Vote'," *The Supreme Court Review*, U. Chic. L.R. (1969) at p. 251).

districts (Collins Dep. p. 78). It may be noted again that out of these 151 seats, only three were characterized as "swing either way". This is by far the most devasting evidence against the Plan.

It is critical to remember that this was not a prediction made by someone looking at the Plan from the outside. It is an analysis made by one of the chief architects of the Plan. It represents more than an informed guess, more than even a self-fulfilling prophecy. His testimony reveals the intent of the creators as to what the Plan was designed to achieve.

Obviously, there was some judgmental factor involved, but, as Collins himself admitted, he used the results of the three prior elections (Collins Dep. pp. 80, 81) and he tried to be as accurate as he could.

What is constitutionally significant is that an attempt was made to design the districts so as to program and control the outcome of the legislative elections for the entire State and for the next ten years.

This Court has interpreted the Equal Protection Clause to require that districts be as equal in population as practicable so that one man's vote has no more numerical weight than another's. That was an important advance.

But it is not enough that a vote be equal. It is more important that the vote matter.

To paraphrase the last lament of Faust: "What doest it profit a voter to gain the right to equality and lose the right of determination."

In Connecticut, as a result of political structuring, the voters gain neither and lose both.

Where voters are grouped and classified and made pawns in order to achieve a purpose unrelated to the essential requirements of the one man-one vote doctrine, then they have been invidiously discriminated against. They are thus denied their "individual and personal" right to an effective vote under the Equal Protection Clause (*Reynolds* at 562).

Such a policy cannot be rational justification for the deviations of the Board Plan.

G. Responding to appellant's benevolent gerrymandering argument.

The appellant argues that not only is political structuring of the districts justified as a matter of state policy, but it is beneficial.

The benevolence appellant ascribes to the Board doctrine is that it avoids, what he characterizes as, "minority government" which, he claims, results from a political party gaining a majority of the total vote of all the individual district elections and failing to elect a majority of the legislators.

Ther are so many practical, philosophical, and legal objections and errors to appellant's claim, that it is hard to express them all within the strictures of brevity required by a brief of this nature. Nevertheless, the appellant's claim is so insistent and apparently so central to his entire position, that we must respond.

At the outset, a distinction must be made between the following:

(a) On the one hand, the vote of the people; on the other, the party vote;

(b) On the one hand, election for a state-wide candidate, such as governor; and on the other, the election of legislators running in separate single member districts.

If, in a two-man race for state-wide office, a minority of the votes cast elected the winner, clearly we would have minority government. Likewise, if in a two-man race for assemblyman within each district, a minority of the votes cast in that district elected the winner, we would have minority government.

Moreover, if in all the legislative district races, a minority of the people in the state could elect a majority of the legislators, we would have minority government. This is the evil that the one man-one vote doctrine sought to remedy by requiring the equalization of the population in each district. As Chief Justice Warren said in *Reynolds* at p. 569, "It would seem reasonable that a majority of the people of the state could elect a majority of that state's legislators." [24]

The essential error of the appellant is in endeavoring to equate people vote with party vote. He urges that not only the majority of the people vote but also a majority of the party vote should, under the Equal Protections Clause, elect a majority of the legislators. However, the Equal Protections Clause is designed to protect people and not parties. The reach of the clause is even more specific. It is designed to protect individuals and not groups. As *Reynolds* says: ". . . each and every citizen has an inalienable right to full and effective participation in the political processes" (p. 565). The doctrine is one man-one vote and not one party-one guaranteed number of legislators.

Moreover, while the total vote for a state-wide candidate of one party, such as governor, obviously has meaning, the state-wide total of all the vote cast in the individual district races for all the district candidates of one party is of doubtful meaning. Whereas a state-wide candidate runs as a party candidate in all the districts, legislators run as

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[24]-Appellant's distortion of the meaning of the Chief Justice's statement at page 29 of his brief is simply incredible.

party candidates only in each individual district. The races in each of these individual districts are disparate. Although party affilation is of some significance, the district elections are more likely to be determined by different personalities, by the factor of incumbency and, at least up to this time in Connecticut where assembly districts have been coterminous with town boundaries, by local issues such as the prospect of low-income housing being brought into a town; the problem of sex education in the schools; a political scandal involving the mayor; and a completely local tax problem. Adding up the votes cast for each party's candidates in these different races which are decided on non-party issues is like adding up apples, rollerskates, and blue Buicks. It is doubtful whether that aggregate is a rational number upon which a rational state policy of reapportionment can be based.

Moreover, the concept urged by the appellant is without boundaries or standards. If a political party which acquires a majority of the aggregate vote of the district elections is entitled to a majority of its candidates being elected, then when the party acquires a specific percentage of this aggregate vote should it not get that percentage of its candidates elected?

What appellant's argument really comes down to is a plea for proportional representation. In fact, Judge Saden specifically admitted so.[25]

Viewed the other way, appellant's argument is an attack upon the single member system of representation. Such a system is premised upon legislators being elected from

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[25] Judge Saden testified:

"Q. (by Judge Blumenfeld) I don't want to over simplify this, but in effect what you were doing was establishing the principle of proportional representation on a statewide basis? A. Within very broad limitations." (Transc. p. 134)

specific districts in order to represent the local or regional interests of that district. This system of single member representation is subverted when a legislative districting plan is designed to elect legislators on the basis of a state-wide formula related to prior state-wide party vote.

The availability of proportional representation as an alternative electoral system does not excuse purposeful manipulation of the single member districts to achieve a balance of elected legislators between the political parties.[26]

In substantiation of his claim of the evils of "minority government," the appellant cites the 1970 Connecticut vote for the Senate (see Appellant's brief at pp. 28, 29). In that election, the Democratic candidates for the Senate in the aggregate received 518,726 votes and the Republican candidates received 536,555 votes; a plurality of 17,827 for the Republicans. The Democrats elected 19 senators and the Republicans 17. Thus appellant claims that there was an error of 1.6% of the vote by reason of the Democrats winning one more race than the Republicans.

On the basis of this example, appellant constructs his whole outcry of the dangers of "minority government." It is frightening to think that the appellant wants to engineer the apportionment of the Legislature to make the vote even more exact.

What the evidence really reveals is that the radical attempt to maneuver the legislative districts in order to achieve the proportional party representation of the kind the Board adopted, is simply not worth it. When the elusive benefit the appellant is claiming of precision between total party vote and legislators elected is weighed against the pernicious consequences of political structuring, it is clear that the balance falls strongly against political structuring.

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[26] See Edwards, "The Gerrymander and 'One man, One Vote'," 46 N.Y.U. Law Review, 897 (Nov. 1971).

These pernicious consequences, as the facts of the case reveal, are the following:

(a) Political structuring was a substantial cause of the population deviation.

(b) It caused the unnecessary cutting of town lines in violation of the State Constitution.

(c) It caused the bizarre shapes of the districts.

(d) It created the maximum number of safe districts.

(e) It predetermines elections for the next ten years.

(f) It foists upon the State a form of proportional representation in violation of the single member district system.

These consequences of the political structuring utilized by the Board warrant the Board Plan being invalidated on the grounds of insidious discrimination resulting from political gerrymandering. The Court below did not "reach this question" and we do not urge it on this motion to affirm (although we reserve it, if this motion is denied and jurisdiction is noted).

However, all that this Court need now determine is that the District Court below was entirely correct in concluding that political structuring is not a rational state policy which would justify the deviations of the Board Plan.

III.

The reapportionment Board in this case was dominated by partisan political considerations, was not a deliberative body, and is not entitled to a presumption of fairness.

The appellant argues that the Plan should be upheld because it is the product of a bi-partisan Board with a tie-breaker. His point is that such a Board institutionalizes fairness.

However, the evidence in this case reveals that partisan political consideration dominated the decision-making of the Reapportionment Board which created the Plan. Its primary concern was to achieve fairness between the political parties. The issue here, however, is not whether or not one political party gained an advantage over the other. The plaintiffs in this case are citizens and voters who assert their individual and personal rights under the Equal Protection Clause.

Whatever the composition of the reapportionment authority, when it failed to meet the required standard of equility among the legislative districts and failed to justify the deviations by a rational state policy, its handiwork violated the Fourteenth Amendment.

Moreover, the way the Board functioned in this case deprives it of any presumption of fairness. The Board was a one-man operation of Judge Saden, assisted by his counsel, Mr. Collins. It never met on the districting plan for the House. As a Board, it never met at all to take action on the entire Plan. The final Plan on the last day before the constitutional deadline was simply submitted to the "tie breaker", Justice Thim, for his signature and he had no choice but to sign it.

On July 1, 1971, pursuant to the Connecticut Constitution, Judge Leo Parskey of the Connecticut Superior Court was named to the Board by the Speaker of the House of Representatives, and Judge George Saden was nominated by the House Minority Leader. These two judges named Justice John R. Thim of the Connecticut Supreme Court, as the third member of the Board.

Judge Saden had served as counsel to the minority leadership in the Connecticut General Assembly from the date it convened on January 6, 1971. In this capacity he had toiled for some five months advising the minority members of the General Assembly and the eight-man Reapportionment Commission who attempted to meet the constitutional mandate of reapportionment. In June of 1971, Judge Saden was appointed to the Superior Court Bench by the Governor of Connecticut, which appointment was confirmed by the General Assembly on June 3, 1971.[27] He took office on or about June 15, 1971, and within two weeks he was named to the Reapportionment Board to begin work on deciding on a plan of apportionment on which he had been an actively partisan advocate for some five months.

The State Constitution required the Board to submit a reapportionment plan by September 30, 1971. The Board first met on August 24 or 25, 1971 (Saden Dep., p. 7; Collins Dep., p. 15). Judge Saden and Judge Parskey operated essentially independently of one another in the preparation of a plan and then tried to agree between themselves (Saden Dep., p. 8). Justice Thim was supposed to act as an arbitrator to resolve the difference when the two judges could not agree (Saden Dep., p. 8).

Judge Saden was substantially aided by Mr. James Collins, who was his chief assistant, mathematician and drafts-

[27] Journal of the Connecticut House of Representatives, 1971 Session, June 3, 1971.

man (Saden Dep., pp. 19, 21, 26; Collins Dep., p. 5). Mr. Collins, like Judge Saden, had served as special counsel to the Republican members of the eight-man Reapportionment Commission and from April 1, 1971, through July 1, 1971, had taken an active partisan role in the reapportionment process. Mr. Collins prepared the drafts of the plans which were submitted by Judge Saden (Saden Dep., p. 21).

Judges Saden and Parskey agreed as a matter of priority to deal first with the districting of the Senate. They spent the period from August 25 to September 24 primarily on this task (Saden Dep., pp. 8, 9, 12). A vote was taken on the Senate plan on September 24 in Justice Thim's office. After the vote, Judge Parskey left the meeting (Saden Dep., p. 13) and thereafter there was never another meeting of the Board as a board (Saden Dep., p. 14).

Although Judges Paskey and Saden may have discussed the districting plan for the House, the Board never met over it. After Judge Parsky left the meeting of September 24, Judge Saden testified, "we never got a chance to sit down and go over the House plan from that point on" (Saden Dep., p. 13; Saden Dep., pp. 10, 18).

The only plan of districting of the House that Justice Thim had presented to him was Judge Saden's, so he had no other choice but to accept that plan (Collins Dep., p. 47).[28]

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[28] Mr. Collins testified:

> "Well, the plan as submitted was accepted by Judge Thim, but if I remember correctly I think this was the only plan on the House that was submitted to Judge Thim. There was no other plan on the House submitted to him so the man in fact didn't have any choice, I suppose."

The Board never met to approve the final district lines for both the Senate and the House. The Plan was prepared in its final form, signed by Judge Saden, and then taken to Justice Thim for his signature on September 30 (Saden Dep., p. 13). Judge Parskey declined to approve the Plan but instead filed a dissenting report.

Thus, it is apparent that the document ultimately approved by the majority of the Board was the work of Judge Saden, assisted by Mr. Collins, who for the six months prior to the appointment of the Board had been actively engaged in the partisan efforts of the Connecticut General Assembly to negotiate a plan of reapportionment. They found themselves in the enviable position of advocating a point of view for six months and then getting to decide the issue the way they wanted it.

The foregoing indicates that one cannot simply look at the form of the Reapportionment Board and come to any conclusion that it is entitled to some special favoritism. In actual operation, it was neither deliberative nor nonpartisan. Therefore it is not entitled to any presumption of fairness. Its work product must be scrutinized as carefully as any other plan of apportionment to come before this Court and the criteria for determining its constitutionality must be the same.

IV.

If this Court allows deviations higher than the lowest practicable to achieve, then the proper interpretation of the supremacy clause would permit a state constitutional policy of preserving town lines to justify a higher deviation among the house districts than provided in the Board plan.

If this Court construes the Fourteenth Amendment to permit deviations from equality higher than those permitted by the District Court and higher than the lowest that is

practicable to achieve, then the state plan is still unconstitutional because, contrary to the Supremacy Clause, it applies an unnecessarily restrictive Fourteenth Amendment standard at the expense of a valid state policy of preserving town lines.

The District Court properly read the leading decisions of this Court (*Reynolds, Swann, and Kirkpatrick*), to mean what they appear to say: namely, that the Equal Protections Clause requires that population of legislative districts must be "as nearly equal as is practicable". The Court found that the requisite standard of "as equal as practicable" had not been met and the availability of a plan with a lower deviation irrefutably supports this finding. It further found that the political structuring principle was a substantial cause of the deviation and that this principle was not a proper state policy to justify the deviation.

Appellant claims that the District Court decision is unnecessarily restrictive and that deviations higher than those mathematically necessary should be allowed.[29]

If this Court is going to reinterpret its prior decisions to permit deviations which are higher than can be practicably achieved, then the plaintiffs contend the Board plan is still unconstitutional because it violates the Supremacy Clause. In essence, we contend that if the Fourteenth Amendment does not require as small a deviation as is practicable, then a plan prepared under whatever greater latitude this Court might now be prepared to permit, must, within reasonable limits, accommodate state interests such as the integrity of town lines. For example, if this Court is now to permit deviations up to 15%, the Court would be interpreting the Fourteenth Amendment not to require any

[29] The Appellant also claims that the political structuring principle was a permissable state policy but we have dealt with the lack of merit in this claim above.

smaller deviation. Under the Supremacy Clause, state interests—certainly those set forth in a state's constitution—must not be impaired to any extent greater than required by federal law. Thus, if this Court is now to accord states more latitude, then it must also accord an opportunity for the development of a plan that preserves valid state interests (here, town lines) to as great an extent as federal requirements permit. It would be a coincidence defying belief if the deviation of the Board's Plan was precisely the limit this Court is now prepared to say the Fourteenth Amendment permits. But even if this were so, the evidence shows the Board Plan cuts more towns than need to be cut even at the same deviation. (See Plaintiffs' Ex. 20). If any larger deviation is permitted as a matter of federal constitutional law, then any state plan that cuts town lines more than is necessarily required by the federal standard violates the Supremacy Clause.

Plaintiffs' position is not inconsistent, as the appellant's brief alleges. Plaintiffs are not saying that the deviations, as mathematical expressions, are simultaneously both too high and too low under the existing standard. Plaintiffs are saying that if the deviations must be as small as practicable, in the absence of a valid state policy justifying same (and political structuring is not a valid state policy), the deviations in the Board Plan are too high. But under any new and less exacting standard of deviation enunciated in this case by this Court and in the presence of a valid state policy (such as the preservation of town lines), the deviations in the Board Plan are too low.

If the *Kirkpatrick* case creates a stricter requirement of equality only for Congressional districts than *Reynolds* does for state legislative districts, then giving greater weight to a state policy of preserving town lines as a justification for deviations is a logical way to reconcile and rationalize these cases. In congressional districts (*Kirkpatrick*) towns are not nearly as important as governmental entities as they

are in state legislative districts (*Reynolds*), and, because of the much larger size of congressional districts, (*Kirkpatrick*), it is easier to achieve equality while respecting town lines than it is in the much smaller sized state legislative districts (*Reynolds*).

As indicated above, the Board applied the political structuring principle so as to increase the number of town lines cut (*infra*).

If this Court recognizes respect for town lines as a legitimate reason for higher than mathematically necessary deviations, then the effectuation of this state policy justifies deviations higher than the Board Plan.

Plaintiffs submitted to the Court a plan for the House was a deviation from the ideal ranging from a high of plus 5.58% and a low of minus 5.97%, which resulted in the division of 31 towns as compared to the Plan's 47 towns and creating 39 segments as compared to the Plan's 78 segments (Plaintiffs' Exhibit 21). Plaintiffs also submitted to the Court a plan for the apportionment of the House with a population deviation from the ideal of plus or minus 7.5% which resulted in the division of 27 towns as compared to the Plan's 47 towns and created 34 segments as compared to the Plan's 78 segments (Plaintiffs' Exhibit 22). The later plan represents almost a 50% reduction in the fragmenting of towns at a relatively slight increase in percentage deviation.

This Court has recognized that variations in permissible deviations in order to effectuate particular state policy may depend "on the particular circumstances of the case" (*Reynolds* at p. 578; *Swann* at p. 445). Apart from the generalized argument that the preservation of town lines deters gerrymandering, the facts of this case justify a deviation higher than plus or minus 3.9% in order to preserve town lines.

A. Towns perform state functions.

This Court noted in *Reynolds* (pp. 585-591) that local governmental entities are "frequently charged with various responsibilities incident to the operation of said government. In states much of the legislature's activity involves the enactment of so-called local legislation directed only to the concerns of particular political subdivisions." See also *Jackman* v. *Bodine*, 55 N.J. 371, 262 A. 2d 389 (1970).

In Connecticut the towns perform many important functions of state government. Some they perform as actual agents of the State such as public school education, welfare, and highway maintenance (Transc. pp. 20-22). The State makes a number of block grants and a number of specific purpose grants to the towns for community development, clinics for mentally retarded, urban renewal, clean water, and many other purposes (Transc. pp. 22-25; Pl. Ex. 2).

B. Towns as political organizations of citizens.

Originally all Connecticut towns had a town meeting form of government. Surprisingly, even to this day, 101 of the 169 towns and cities in the State of Connecticut still have open town meetings (Transc. p. 27). In addition there are 28 towns which have a limited town meeting form of government and 7 towns which have a representative town meeting form of government (Transc. p. 27).

The open town meeting functions as the legislative body of the town. All voters and all residents of the towns who own at least $1,000 worth of property on the grand list can attend the meetings, adopt the town budget, and consider and take action on any othe ritems that properly come before the town meeting (Transc. p. 28).

In the limited town meeting form of government, the power and the authority of the citizens in a town meeting are limited to certain specific responsibilities such as the adoption of the annual budget, purchase and sale of real estate, and the approval of bond issues (Transc. p. 28).

In the representative town meeting form of government, the citizens elect representatives to act for them in their town meetings but citizens can come to the meetings and voice their opinions (Transc. pp. 28-29).

Of the total of 47 towns cut by the Board Plan, 16 had some form of town meeting form of government (Transc. pp. 29, 84).

Even in the towns which do not have a town meeting form of government, Connecticut citizens operate directly in the political affairs of the town. Many of these towns have initiative and overrule built into their city and town charters which gives the citizens an opportunity to petition for the adoption of a new ordinance or overrule the actions of the town manager or town council. Likewise, many town charters require that bond issues in excess of a given amount must automatically go to a town-wide referendum. Then, of course, citizens vote in towns for local town councils, mayors, and boards of education (Transc. pp. 30-31).

The residents of a town thus have a political relationship among themselves. They have learned to act together. Their coherence as fellow townsmen gives them political strength. They are capable of holding their elected officials accountable to them.

Elected officials of a single town are visible and identifiable to the residents of that town. These officials know that their constituency is organized into an active and functioning political unit. As a consequence, the elected officials themselves are required to be more responsible and more responsive to the residents of their towns.

This applies not only to local officials but to the representatives to the State Legislature from the Connecticut towns.[30] They are expected to represent the town in the Legislature as well as the broader State interests. The townspeople hold them accountable and they feel a sense of responsibility to the town.

On the other hand, the residents of a legislative district composed of portions of two or more towns have no collective identity, no organization among themselves, little ability as constituents to act in concert to hold their representatives accountable and responsible to them.

There may be some states in the country where the foregoing argument is not applicable because there is not a comparable tradition and practice of town resident participation in the town government and an access to and identification with the representatives from their towns in the state legislature. But in Connecticut, this tradition and practice is important. Thus the preservation of town integrity makes justifiable a greater constitutionally permissible deviation in the size of legislative districts in order to allow free play of the aforesaid tradition and the current practice of local constituency.

Allowing more flexibility in the interpretation of the Fourteenth Amendment in order to give greater weight to the State Constitutional prohibition against dividing town lines is the proper way to apply the Supremacy Clause of the United States Constitution. Whenever possible, accommodation should be achieved and conflict minimized in the interpretation of the provisions of both the federal and a state constitution. (*Reynolds* at p. 584; see also *Metcalf & Eddy v. Mitchell*, 269 U.S. 514 (1926); *Joseph E. Seagram*

[30] Under the Conn. Gen. Statutes (§ 9-372) a "municipal office" includes state representatives or state senators from districts within a single town.

& Sons, Inc. v. *Hosteter,* 384 U.S. 35 (1966); *Potlatch Forests, Inc.* v. *Hays,* 318 F. Supp. 1368 at 1371 (E.D. Ark. 1970).

If this Court enunciates a new interpretation of the requirement of practicable equality under the one man-one vote doctrine, this case should be remanded with direction to the District Court to apply the new rules to the facts of this case or to give the State an opportunity to do so.

CONCLUSION

For the reasons stated herein this Court should affirm the judgment of the District Court for the District of Connecticut here appealed from.

If this Court reinterprets its prior decisions to permit deviations which are higher than strict mathematical equality, then this case should be remanded to the District Court with direction to apply the new rules to the facts of this case or to give the State an opportunity to do so.

Appellant, in his jurisdictional statement, requested the Court to order the interim use of the Board's Plan in the 1972 election. After filing its jurisdictional statement, it filed a separate motion for stay in this case. If that motion has not been acted on prior to the submission of this brief, then for the reasons stated in Plaintiffs' Memorandum in Opposition to Appellant's Motion for a Stay, and on the basis of this brief, the stay should be denied.

Respectfully submitted,

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Dated: June 9, 1972

APPENDIX

APPENDIX A

Memorandum of Decision of Mr. Justice Smith

United States District Court

DISTRICT OF CONNECTICUT

Civil Action No. 14,736

THEODORE R. CUMMINGS, CURT F. BECK, OWEN L. CLARK, GERALD F. HEFFERNAN, JOHN P. DUFFEY, HAROLD C. NUCCIO, RUSSELL E. VINING, ANNE DILLON DALTON and OMAR ALLVORD on behalf of themselves and all others similarly situated,

Plaintiffs,

—and—

NANCY ARONIE, ROBERT D. ALEXANDER, LINDA B. BEIZER, SANTE ESPOSITO, JR., and CHARLOTTE KITOWSKI on behalf of themselves and all others similarly situated,

Intervenors,

—v—

THOMAS H. MESKILL, Governor of the State of Connecticut; GLORIA SCHAFFER, Secretary of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; and NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut,

Defendants,

—and—

J. BRIAN GAFFNEY,

Intervenor.

Before: SMITH, *Circuit Judge,* and BLUMENFELD and ZAMPANO, *District Judges.*

Memorandum of Decision

SMITH, *Circuit Judge:*

This action challenges the Reapportionment Plan for the Connecticut General Assembly devised by a Board of three members, the last available link in a chain of methods mandated by the Connecticut Constitution for the production of a plan of reapportionment for the 1972 elections. The plaintiffs are U.S. citizens, residents of towns in Connecticut, taxpayers, and registered voters. They claim that the Plan violates the Fourteenth Amendment because the deviations from mathematical equality among the districts are impermissibly large, particularly since they have not been justified on the basis of the pursuit of legitimate state policies. They also claim that residents of certain tracts have been entirely omitted from the Plan and that one assembly district is not contiguous. Intervenors Aronie et al. claim that the methods for appointment of personnel for drawing the Plan as well as the Plan ultimately produced deny unaffiliated voters a voice and are therefore unconstitutional. The defendants are officials of the State of Connecticut responsible for enforcing its laws, particularly the Secretary of the State, who is responsible for the conduct of elections. J. Brian Gaffney, intervening as an individual elector of New Britain, argues that the Plan is constitutional, that in any case this court should abstain pending state court action, and that inadvertent errors of omission and lack of contiguity may be corrected, preferably in a state court action now pending.

The action arises under the Fourteenth Amendment to the Constitution of the United States, the Supremacy Clause, Article VI, Clause 2 of the Constitution, and 42 U.S.C. §§ 1983 and 1988. Jurisdiction is conferred by 28 U.S.C. §§ 1343(3) and 1343(4). Plaintiffs seek a temporary and permanent injunction restraining the officers of the state from holding elections in accordance with the present Plan and for further delineation of the rights of the parties.

Memorandum of Decision

A three-judge district court was convened to hear and determine the case pursuant to 28 U.S.C. §§ 2281, 2284.

The Connecticut Constitution, adopted following the successful attack on the former system of apportionment in *Butterworth* v. *Dempsey*, 229 F. Supp. 754 (D. Conn.), *aff'd* 378 U.S. 564 (1964), and 237 F. Supp. 302 (D. Conn. 1965), requries that the Senate consist of 30 to 50 members and that each senatorial district be contiguous as to territory. The House must consist of from 125 to 225 members; each district is to be contiguous as to territory and no town can be divided except for the purpose of forming assembly districts wholly within the town. Article Third, §§ 3, 4. The Constitution also requires that the establishment by the General Assembly by two-thirds vote of each house at the first regular session next after the completion of the United States census provided that if the Assembly fails to act by the first of April, a Commission of eight members designated as provided in the Constitution should submit a plan to the Secretary of the State by the first of July and failing timely action by the Commission, a Board of three persons consisting of two Superior Court judges chosen respectively by the Speaker of the House and the Minority Leader of the House and a third member, an elector, selected by the two members so designated is required to submit a plan of districting to the Secretary of the State by October first. When the Assembly and the Commission failed timely to submit a plan, pursuant to this provision Superior Court Judges George A. Saden and Leo Parskey were chosen and in turn selected Justice John R. Thim as the third member of the Board. A plan was approved and adopted by two members of the Board, Judge Saden and Justice Thim, and submitted on September 30, 1971 to the Secretary of the State. The third member of the Board, Judge Parskey, did not approve of the Plan and submitted a minority report. The Plan reapportions the General Assembly of the State of Connecticut.

Memorandum of Decision

The population of the State of Connecticut, according to the 1970 census, is 3,032,217.

The Plan provides for a House of Representatives consisting of 151 members, each elected from a single assembly district. With a population of 3,032,217 and 151 assembly districts, the perfect number of people in each assembly district should be 20,081.

The Plan provides for a Senate consisting of 36 senators, each elected from a single senatorial district. With a population of 3,032,217 and 36 senatorial districts, the perfect number of people in each senatorial district should be 84,228.

The population of assembly districts created by the Plan deviates from the perfect average of 20,081 by a maximum of plus 3.93% or 789 people, and by a minimum of 3.90% or 784 people for a total deviation of 7.83%.

In 39 assembly districts under the Plan or 25.83% of the 151 assembly districts, the population deviates from the perfect average of 20,081 by plus or minus 3.0% to 3.93%. The population of 34 assembly districts, 22.52% of the total, deviates by plus or minus 2.0% to 2.99%; the population of 47 assembly districts, 31.12% of the total, deviates from 1.0% to 1.99%; and the population of the remaining 31 assembly districts of the total of 151 assembly districts, 20.53% of the total, deviates from 0.0% to 0.99%.

The average deviation from perfect equality for all the assembly districts under the Plan is 399 people or 1.9% and a mean deviation from perfect equality for all the assembly districts is 373 people or 1.8%.

The ratio of the largest assembly district to the smallest assembly district under the Plan is 1.082 to 1.

The population of senatorial districts created by the Plan deviates from the perfect average of 84,228 by a maximum of plus 0.88% or 745 people and by a minimum of

minus 0.93% or 787 people for a total deviation of 1.81%. The average deviation from perfect equality for all the senatorial districts is 379 people or .45% and a mean deviation from perfect equality for all the senatorial districts is 392 people or .47%.

The ratio of the largest senatorial district to the smallest senatorial district under the Plan is 1.018 to 1.

The smallest number of people needed to elect a majority in the House of Representatives (sometimes known as the electoral percentage) is 49.33%.

The smallest number of people needed to elect a majority in the Senate (the electoral percentage) is 52.54%.

The boundary lines of 47 towns are cut under the Plan so that one or more portions of each of these 47 towns are added to another town or a portion of another town to form an assembly district.

Twenty-nine of the aforesaid 47 towns have their boundary lines cut more than once resulting in more than one portion of the town being added to another town or a portion of another town to form an assembly district. If a segment of a town is defined as a portion of a town being used to form an assembly district not wholly within that town, the Plan creates 78 segments of towns in the formation of 151 assembly districts.

The formation of 55 of the 151 assembly districts involved the segmenting of towns and 96 assembly districts are wholly within town boundaries or are formed by the combination of entire towns.

Twenty-three towns are segmented to create senatorial districts under the Plan.

The boundary lines of assembly districts do not mesh with the boundary lines of senatorial districts. Eighty-one assembly districts under the Plan are not located entirely within a senatorial district and in 48 of these 81 assembly districts, a division between two senatorial districts occurs within a town.

Memorandum of Decision

The smallest units of census data available to the Reapportionment Board were block groups within census tracts and enumeration districts. The average population of block groups is between 1200 and 1250 people. The average population of enumeration districts is between 750 and 800 people. There is a total of approximately 2750 block groups and enumeration districts; of these about 80% are block groups and about 20% are enumeration districts. Of these approximately 2750 census areas the Board had to work with, the average area contained approximately 1100 people, and the mean area contained approximately 1000 people; 88% of this total of 2750 areas exceeded 400 people in size.

Annexed hereto is a breakdown of the population of senatorial and assembly districts prepared by the United States Department of Commerce, Bureau of the Census, from the results of the census as of April 1, 1970.

In developing the Plan, Mr. Collins, acting for the Board under the direction of Judge Saden, gave principal weight to two considerations in Senate and House districting, numerical equality and a partisan balancing of strength in each house, and in the House districting also the undesirability of splitting towns.

The partisan balancing of strength in each house, termed by intervening defendant a "fair political balance" and by plaintiffs "political gerrymandering" was obtained by so adjusting the census areas utilized as building blocks into the structuring of Senate and House districts that, on the basis of the party vote for all the Senate candidates of each party in the elections of 1966, 1968 and 1970, whichever party carried the state should carry a majority of Senate seats proportional to the statewide party majority, and likewise in the House, based on the party vote for all the House candidates of each party in the same three elections.

In one or more House and one or more Senate districts some accommodation was also made in the interest of retaining in office a particular incumbent.

The result apparently obtained by Mr. Collins made up a House of approximately 70 safe Democratic seats, 55 to 60 safe Republican seats, with the balance designed as probable Democratic, swing Democratic, probable Republican, swing Republican, or just plain swing.

The Senate result was characterized as 16 solid Democratics, 2 probable Democratic, 12 solid Republican, 4 probable Republican and 2 swing.

The method used resulted in creating some districts with highly irregular and bizarre outlines. While there is no provision in the Federal or Connecticut Constitutions requiring that legislative districts be compact, the courts have looked to a lack of compactness, see *Paulson* v. *Meier,* 246 F. Supp. 36, 43 (D.N.D. 1965) or have required absence of arbitrariness, *Roman* v. *Sincock,* 377 U.S. 695 (1964) in determining whether impermissible purposes rather than compelling state interests have caused deviations from equality; and see *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960) ("uncouth twenty-eight-sided figure" in racial gerrymander.) Here the peculiar shapes are additional support for the admitted part of the political balance theory played in the structuring of the districts. See also, *Drum* v. *Seawell,* 250 F. Supp. 922 (M.D.N.C. 1966) "compactness and contiguity are aspects of practicable equality." If partisan political balancing were eliminated as a factor, a closer approach to perfect equality could be achieved with the materials at hand (see Plaintiff's Exhibit 23, attached as Appendix A), or in the alternative fewer town lines could be cut. (See Plaintiffs' Exhibits 20, 21 and 22, Appendices B, C, and D).

We find that the court has jurisdiction over the parties and subject matter of the action.

We conclude that the deviations from equality of populations of the Senate and House districts are not justified by any sufficient state interest and that the Plan denies equal protection of the law to voters in the districts of greater population in violation of the Fourteenth Amendment to the Constitution of the United States. The Plan is therefore invalid and its employment in elections to the Connecticut General Assembly must be enjoined.

Intervening defendant urges that we abstain from action in this case pending resolution of an action in the state courts. We note in this connection that the Attorney General of Connecticut has questioned the jurisdiction of the state courts over the action of the Board as a constitutional body. We do not share his concern over the power of the state courts to act, but find the abstention doctrine inapplicable to this case.

The abstention doctrine of *Spector Motor Service, Inc.* v. *McLaughlin,* 323 U.S. 101 (1944) and its progeny would encourage abstention by the federal courts pending resolution by the state courts of ambiguities in state legislation whose resolution might eliminate the federal constitutional question entirely. Here, however, the interpretation of the state constitutional provisions by the state court will not eliminate the question of whether the Board's Plan either as written or as modified in the respects sought in the state court action complies with the so-called "one-man-one-vote" requirement of *Baker* v. *Carr,* 369 U.S. 186 (1962); *Reynolds* v. *Sims,* 377 U.S. 533 (1964) and the cases which have followed, see *Roman* v. *Sincock,* 377 U.S. 695 (1964); *Lucas* v. *Colorado General Assembly,* 377 U.S. 713 (1964); *Swann* v. *Adams,* 385 U.S. 440 (1967); and especially the more recent cases of *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969) and *Wells* v. *Rockefeller,* 394 U.S. 542 (1969). *Davis* v. *Mann,* 377 U.S 678 (1964), an apportionment case, holds that "where the federal court's juris-

diction is properly invoked and the relevant state constitutional and statutory provisions are plain and unambiguous there is no necessity for the federal court to abstain pending determination of the state law questions in a state court," citing *McNeese* v. *Board of Education,* 373 U.S. 668 (1963). See also, *Damico* v. *California,* 389 U.S. 416 (1967); *Sostre* v. *McGinnis,* 442 F.2d 178 (2d Cir. 1971) (*en banc*), *cert. denied,* ..... U.S. ..... (March 6, 1972); *Rodriguez and companion cases* v. *McGinnis,* .... F.2d ..... (2d Cir. Jan. 25, 1972) (*en banc*); *Wilwording* v. *Swenson,* ..... U.S. ..... (Dec. 14, 1971). So we reach the merits.

The constitutional principle of the vote cases appears to be that deviations from absolute numerical equality which are more than minimal may not be allowed unless they are either the unavoidable results of attempts to obtain precise equality or are justified by some legitimate state interest. While the early cases seem to indicate that political subdivision boundaries and geographical and historical factors could justify some deviations from equality, dilution would not be allowed "in any substantial way." See *Reynolds* v. *Sims, supra.* Applying this standard there have been very few bases for deviation approved. As Justice Fortas remarked, concurring in *Kirkpatrick,* "the Court rejects almost every justification that would support any variation." *Abate* v. *Mundt,* 403 U.S. 182 (1971) did permit deviation for a legitimate state interest based on the unusual historical interrelationship of local and county governmental bodies in New York carrying out dual functions with dual personnel. We have no such situation here. The defendants seek to justify the deviations here as the products of a good faith effort to reach equality while honoring the state constitutional requirement of keeping to town boundaries and at the same time balancing the results for partisan political fairness, that is, to achieve

an apparent balance of partisan political strength in the Assembly coinciding with the total statewide partisan political balance measured by the results in the last three Assembly elections. Plaintiffs attack this as political gerrymandering and base their case primarily on the claim that this is in itself constitutionally prohibited. Defendants contend that it is not only prohibited but not justiciable as a political question. It is quite possible that if the sole question were political gerrymandering it would be non-justiciable. See *Sincock* v. *Gately*, 262 F. Supp. 739 (D. Del. 1967); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965); *WMCA Inc.* v. *Lomenzo*, 238 F. Supp. 916 (S.D.N.Y. *aff'd per curiam*, 382 US. 4 (1965), with a concurring opinion in which Mr Justice Harlan interpreted the decision to mean that the Supreme Court must be held to have found partisan gerrymandering immune to constitutional attack, and the *per curiam* opinion of the Supreme Court, 385 U.S. 114 (1966) on appeal from the Supreme Court of Michigan, 377 Mich. 396, 140 N.W. 2d 436, *In the Matter of the Apportoinment of the Michgian Legislature, Badgley, et al., Appellants*, dismissing the appeal, stating "the motions to dismiss are granted and the appeal is dismissed for want of a substantial federal question." See also, *Cousins* v. *City Council of Chicago*, 322 F. Supp. 428 (N.D. Ill. 1971) and *Skolnick* v. *Mayor & City Council of Chicago*, 319 F. Supp. 1219 at 1229 (N.D. Ill. 1970). *Ely* v. *Klahr*, 403 U.S. 108 (1971) and *Whitcomb* v *Chavis*, 403 U.S. 124 (1971) also seem to indicate that claims based purely on political gerrymandering would be extremely difficult to sustain if justiciable at all. But we need not reach this question. From the other side there is no doubt that political gerrymandering cannot be approved as a legitimate reason for violating the requirement of numercial equality of population in districting. While it may be fair in one sense in obtaining an overall political balance, it is arguably unfair to individual voters and potential candidates for

political office who find themselves locked into districts deliberately structured to be "safe" districts for a party they oppose. No legislative or constitutional enactment provides any basis for it or authorizes it. No compelling state necessity for it is demonstrated. The Supreme Court plainly would not approve the partisan political structuring which was a substantial cause of the numerical deviations of the Board Plan here. In *Ely* v. *Klahr, supra,* the Court approved of the invalidation of a legislative plan by the lower court, which had found "inapposite" "the consideration of party strength as a factor in reapportionment or redistricting" as well as a purpose to minimize contests between incumbents. We must therefore invalidate the Plan before us and require closer adherence to the constitutional guidelines.

The effort by the intervening defendants to create a new constitutional requirement of inclusion of a class of registered voters unaffiliated with any party in setting up districting boards or commissions need not give us pause. There is no precedential basis for the claim. What little precedent we have found looks the other way. See *Socialist Workers Party* v. *Rockefeller,* 314 F. Supp. 984, 997 (S.D.N.Y., *aff'd* 400 U.S. 806 (1970) (Major party chairmen permitted to take part in selecting members of Board of Elections). The area is sufficiently confused as it is without attempting further to shackle constitutionally the legislative bodies seeking to act in the field. The unaffiliated voter takes part on an equal basis in the election of the Assembly, from whose members participants in the appointment of the Commission and Board are chosen.

We do not reach the pendent claim of non-compliance with the state constitution or the matter of correcting the inadvertent errors in view of the fact that we are adopting another apportionment in any case.

It would be preferable to a court-imposed plan, of course, if a valid plan were adopted by the legislature in place of

the Plan of the Board here invalidated. We would welcome such action. However, the time is short and delay in the hope of such legislative action is not justified.

We hold that the state constitutional scheme for decennial redistricting of the Connecticut General Assembly is not itself invalid as in violation of the Fourteenth Amendment of the Constitution of the United States. We hold, however, that the Plan adopted by the Board under the constitutional scheme denies the equal protection of the law to plaintiffs whose voting power is diluted by the deviation from numerical equality of the Senate and Assembly districts set up by the Plan. Defendants are enjoined from any action to implement the Plan or to hold elections thereunder. The court will appoint a master with instructions to devise a plan conforming to federal and state constitutional requirements, to be submitted to the court and placed in effect.

The foregoing shall be considered the findings of fact and conclusions of law of the court under Federal Rule of Civil Procedure 52a.

If a constitutional plan is enacted into law prior to a court order placing a court plan in effect application may be made to modify the court's judgment. The court will retain jurisdiction for all purposes.

Dated at Hartford, Connecticut, this 30th day of March, 1972.

/s/ J. JOSEPH SMITH
J. JOSEPH SMITH,
U.S. Circuit Judge

/s/ M. JOSEPH BLUMENFELD
M. JOSEPH BLUMENFELD,
U.S. District Judge

/s/ ROBERT C. ZAMPANO
ROBERT C. ZAMPANO,
U.S. District Judge